

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

530

In The
UNITED STATES COURT OF APPEALS
For The District Court Of Columbia Circuit

No. 23,790

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 29 1970

Nathan J. Carlson
CLERK

IN RE THE MATTER OF Appointment of
Conservator for ~~Appointment of~~
AGNES M. DRISCOLL
James Hamilton, Removed
Conservator, Appellant

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

APPENDIX

WILLIAM B. WOLF, JR.
1025 Connecticut Ave., N.W.
Washington, D.C. 20036

Attorney for Appellee

WILLIAM HOWARD PAYNE
1086 National Press Bldg.
Washington, D.C. 20004

Attorney for Appellant

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CIVIL DOCKET
United States District Court for the District of Columbia

Date	Description
Mar. 19 1969	Deposit for costs by Complainant; appearance
Mar. 19	Summons, copies (-) and copies (-) of Complaint issued
Mar. 19	Petition for appointment of Guardian Ad Litem.
Mar. 20	Notice of hearing to Mary Meyer Mellott; exhibit; c/m 3/19/69, filed.
Mar. 20	Notice of hearing to Otto Meyer; exhibit; c/m 3/19/69, filed.
Mar. 20	Notice of hearing to Margaret Ann Hamilton; exhibit; c/m 3/19/69, filed.
Mar. 20	Order appointing John W. Treanor, Jr., as guardian ad litem; setting April 10, 1969 at 10:00 a.m. for hearing on petition for appointment for conservator. (R)
Mar. 25	Notice of mailing of hearing on petition for appointment of conservator.
Apr. 10	Report of John Holland Treanor, Jr., guardian ad litem; exhibit; inventory of assets; exhibits (2) filed
Apr. 10	Appearance of Judy F. Potter associate counsel for ward, filed
Apr. 10	Order appointing James Hamilton as conservator; undertaking

RECORDS		
		(II)
Apr 24	Power of attorney of James Hamilton to Clerk.	filed
Apr. 24	Undertaking of conservator in the amount of \$160,000.00 with St. Paul Fire and Marine Insurance Co., approved.	filed
May 21	Petition of John Holland Treanor, Jr., guardian ad litem, ex parte, John Holland, Jr.	filed
May 22	Order authorizing payment of \$4,125.00 fee or \$400.00 legal expenses, (iv), (v)	micro 23 MAY 1969 Corcoran
June 2	Petition of counsel for allowance of attorney fees and disbursements; consent, Appendix A.	filed
June 2	Order authorizing retainer, (vi)	Corcoran
June 2	Order authorizing payment of \$1,300.00 fee and \$26.70 retainer to Reaves & Harrison, (iii)	Corcoran
June 25	Sixty day report of James Hamilton, conservator under Rule 67, filed.	
July 2	Petition of counsel for appointment of law and disbursement, Appendix A.	filed
July 2	Order authorizing payment of \$1,300.00 fee and \$26.70 retainer, (vii)	Corcoran
July 22	Petition of James Hamilton, conservator, for appointment of law and disbursement, (viii)	Corcoran
July 22	Petition of James Hamilton, conservator, for appointment of law and disbursement, (ix)	Corcoran

CIVIL DOCKET

United States District Court for the District of Columbia

IN RE: James M. Meyer et al. C. A. No. 696-69 Supplemental Page No

Date	Proceedings	F
1969 July 25	Petition of conservator for allowance of attorney's fees and disbursements; Appendix A; consent.	
July 25	Petition of conservator for substitution of counsel; consent.	
July 25	Motion of conservator for an extension of time within which to respond to petition of Otto Meyer; reh'd c/a 7/25/69.	
July 26	Notice of Otto Meyer to take deposition of James Hamilton, conservator; reh'd 7/24/69.	
July 28	Notice of Otto Meyer to take deposition of Nancy E. Hamilton; c/a 7/24/69.	
July 28	Action brought of Harry W. Bellotti v. Otto Meyer.	
July 29	Points and Authorities of Otto Meyer in opposition to motion for an extension of time in which to respond to petition; 24-22822, filed.	
July 29	Plaintiff Otto Meyer, Jr., et al. v. 24-22862, filed.	

* Aug. 28	Order authorizing retaining William Howard Payne vice law firm of Petives and Garrison. (National Press Bldg.) (N)	Corcoran, James		
Aug. 30	Order of reference to auditor. (N) AUD	Corcoran, James		
Aug. 5	Affidavit of Lucy Grier Johnson; c/m 7-30-69.	filed		
Aug. 6	Affidavit of Alexander S. Grier, Jr., c/m 8/1/69.	filed		
Aug. 6	Stipulation to take depositions of James Hamilton and Nancy E. Hamilton.	filed		
Aug. 8	Motion of counsel for conservator for security for costs; c/m 8/7/69; M.C.; PIA	filed		
Aug. 11	PIA of Otto Meyer in opposition to motion for security for costs; c/m 8/8/69.	filed		
Aug. 13	Notice of Conservator to take deposition of Otto Meyer; c/m 8-12-69	filed		
Aug. 15	Report of Deputy Auditor. (N)	filed		
Aug. 19	Order denying conservator's motion for security for costs. (N)	Wadley, J.		
Aug. 19	Order extending time to oppose petition for removal of conservator until August 25, 1969. (N)	Wadley, J.		
Aug. 25	Response of Conservator to petition of Otto Meyer for removal of Conservator; affidavit o/m 8/25/69.	filed		

CIVIL DOCKET

United States District Court for the District of Columbia

IN RE: James H. Moyer, Jr., et al. C. A. No. 696-69 Supplemental Page No

DATE	PROCEEDINGS	P
July 25, 1969	Petition of conservator for allowance of attorney's fees and disbursements; Appendix A; consent.	
July 25	Petition of conservator for substitution of counsel; consent.	
July 25	Motion of conservator for an extension of time within which to respond to petition of Otto Meyer; Oral c/m. 7/25/69. M.G. filed	
July 25	Notice of Otto Meyer to take deposition of James Hamilton, conservator; Oral 7/25/69.	
July 28	Notice of Otto Meyer to take deposition of Nancy E. Hamilton; Oral 7/25/69.	
July 28	Agreement of Mary Anne Moyer, Jr. and Otto Meyer; Oral 7/25/69.	
July 29	Posses and Authorities of Otto Meyer issued to him for an extension of time in which to respond to petition; 247-7/28/69. Filed	
July 29	Agreement of George Meyer, Jr.; Oral 7/28/69. Filed	

Aug. 28	20	Affidavit of Margaret Mangan; c/m 8/28/69.	Order authorizing retaining William Howard Payne vice law firm of Reeves and Harrison, (N) Corcoran, J. M. Jero
Aug. 30	21	Order of reference to auditor. (N) Audit,	Corcoran, J. M. Jero
Aug. 6	22	Affidavit of Lucy Grier Johnson; c/m 7-30-69.	filed
Aug. 6	23	Affidavit of Alexander S. Grier, Jr.; c/m 8/1/69.	filed
Aug. 6	24	Stipulation to take depositions of James Hamilton and Harry E. Hamilton.	filed
Aug. 8	25	Motion of counsel for conservator for security for costs; c/m 8/7/69; M.C.; PBA	filed
Aug. 11	26	PBA of Otto Meyer in opposition to motion for security for costs; c/m 8/8/69.	filed
Aug. 13	27	Notice of Conservator to take deposition of Otto Meyer; c/m 8-12-69	filed
Aug. 15	28	Report of Deputy Auditor. (N)	filed
Aug. 19	29	Order denying conservator's motion for security for costs. (N) Mangan, J. M. Jero	filed
Aug. 19	30	order extending time to oppose petition for removal of conservator until August 25, 1969. (N) Mangan, J. M. Jero	filed
Aug. 25	31	Response of Conservator to petition of Otto Meyer for removal of conservator; affidavit c/m 8/25/69.	filed

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CIVIL DOCKET

United States District Court for the District of Columbia

IN RE: AGNES M. DRISCOLL	C. A. No. 696-69	Independent Pet.
Date		
1969		

- Phone (202) _____
- AUG. 27 Motion of Conservator for ratification and approval of decedent's expenditures of conservator; P & A. filed
- Aug. 27 Order ratifying and approving the removal of Agnes M. Driscoll to Fairfax Nursing Home and to expand funds at rate of \$25.00 per month for such purpose. (H)
- Sep. 4 Order ratifying report of Auditor; \$167,000.00 additional undertaken. (N)
- Sep. 12 Additional undertaking of James Hamilton, Conservator, to sum of \$167,000.00 with Transactor's compensation approved. filed
- Sep. 12 Deposition of James H. Hamilton and Nancy J. Pratt filed
- Exhibits 1, A, B - 2.
- Sep. 12 Deposition of Otto Meyer for counsel; fee \$15.00 filed
- Sep. 12 Memorandum of Points & Authorities by Conservator to Support C.S. response to petition of Otto Meyer; Oct. 2/1/69; exhibits (H) filed

Sep. 22	Motion of Conservator, to set petition of Eric Meyer for hearing on the Civil Non-Jury trial calendar and for the taking of evidence on the petition; P/S 2/19/69, M.C. filed.
Sep. 24	Petition and Authorities of Petitioner in support of application of Eric Meyer for removal of Ward to remove Conservator; P/S 9/23, filed.
Sep. 25	Points & Authorities in opposition to motion of conservator to set the petition of Eric Meyer for hearing on the Civil Non-Jury trial calendar and for taking of evidence on petition; filed c/m 9/24/69.
Sep. 26	Reply of counsel for Conservator to Points and authorities in opposition to motion to set on non-jury trial calendar; P/S 9/25/69.
Sep. 26	Reply of counsel for Conservator to Points and authorities in support of petition of Eric Meyer; D/C 9/26/69, filed.
Sept. 26	Motion of conservator for approval of application of Eric Meyer for removal of Eric Meyer from trial calendar; filed.
Sept. 26	Motion of conservator to postpone hearing on petition of Eric Meyer for removal of Eric Meyer from trial calendar; filed.
Sept. 26	Order denying application of Eric Meyer for removal of Eric Meyer from trial calendar; filed.
Sept. 26	Order denying application of Eric Meyer for removal of Eric Meyer from trial calendar; filed.
	(see next page)

CIVIL DOCKET

United States District Court for the District of Columbia

TIN 23: Action No. 10-10-69

C. A. No. 696-69 Supplemental Page No. 3

DATE		PAGE
Sept. 30, 1969	Supplemental report of John W. Tegnor, P.A.; c/m 9-30-69; exhibits (3);	filed
Oct. 2	Supplement of conservator to conservator's opposition to motion of Otto Meyer; Exhibits (3); P.S. 10/2/69.	
Oct. 2	Petition of Otto Meyer to remove conservator and for appointment of successor argued and taken under advisement (Reopened by Clerk, J.)	
Oct. 6	Comment of the conservator on the supplemental report of the guardian ad litem; affidavit; c/m 10/6/69.	filed
Oct. 6	Motion of conservator for leave to file reply to paragraphs 5 & 7 of the guardian ad litem's supplemental report; P&A; c/m 10/6/69 N.C.	filed
Oct. 10	P&A of Otto Meyer in opposition to conservator's motion for leave to file reply to paragraphs 5 and 7(2) of guardian ad litem's supplemental report; c/m 10-10-69.	

Oct.	13	Transcript of proceedings - 9-29-62; Michael Sora, Reporter. (Court's copy)	filed
Oct.	21	Order removing James R. Hamilton as conservator and directing him to, within 15 days, turn over all assets and property etc. to successor and to render Final Account to Auditor within 30 days (II) (see Order for details)	Sirica, J.
Oct.	21	Order appointing Herbert John Miller, Jr., as successor conservator; \$225,000.00 undertaking (III)	Sirica, J.
* Oct.	31	Undertaking of Herbert John Miller, Jr., successor conservator, in sum of \$325,000.00 with Peerless Insurance Co. approved. filed	
* Oct.	30	Order that Conservator may reply to Paragraph 5 and "(e)" of supplementary report of the guardian ad litem within ten days or to and including October 27, 1969. (N) Wires 11-3-69 Sirica, T.	
Nov.	12	Petition of Otto Meyer for reimbursement of expenses and allowances of attorney's fees in connection with his defense. Filed	
Nov.	12	Transcript of proceedings 10-2-62; Michael Sora, Reporter. Filed	
Nov.	18	Gerald Hevitt, reporter; (Court's Copy). Motion of conservator for continuation of order 2nd for extension of time to file accounting (III); Wires 11-1-69 Sirica, T. filed	
		(see over)	

CIVIL DOCKET

United States District Court for the District of Columbia

In re: AGING W. MILLER, et al., v. No. C-69, Supplemental Docket No.

DATE	DESCRIPTION
10/20	
* Nov. 12	Motion of appeal by counsel for James Hamilton, from decree of 10-21-69; deposit \$5,00 by Charles Robbins; copies certified to Herbert John Miller, Jr., William B. Wolf and Otto Meyer, cost bond on appeal by James Hamilton, Jr., sum of \$5,000 filed.
* Nov. 16	Motion of James Hamilton for leave to file certain exhibits filed
* Nov. 20	Motion of James Hamilton to postpone trial of action to December 1, 1969, filed
* Nov. 20	Motion of James Hamilton to postpone consequences of extension of time mentioned above to December 1, 1969, filed
* Nov. 21	Order ratifying certain expenditures. (W)
Nov. 21	Petition of Herbert J. Miller, et al., successor trustee for leave to expend funds; Exhibit A, filed
Nov. 21	Order authorizing certain expenditures. (H)
Nov. 25	Supplement to petition of George Meyer for reimbursement of expenses and allowance of attorneys' fees; c/n 11-21-69, signed 11-25-69

Nov.	26	Transcript of proceedings of Nov. 19, 1969; Pet. to file original court writings; Michael Schell (original copy)	filed
Nov.	26	Points and authorities of Otto Meyer in opposition to petition of removed conservator for extension of time; c/m 12/2/69	filed
Dec.	4	Petition of James Hamilton, to compensate attorney fees; c/m 12/10/69	filed
Dec.	5	Final account and report of Otto Meyer, conservator; filed	filed
		Rule 22.	
Dec.	9	Points and authorities of counsel for Otto Meyer in opposition to removed Conservator's petition to compensate counsel	filed
		c/m 12/8/69	
Dec.	10	Reply of counsel for James Hamilton to opposition to his petition for instructions; c/m 12/8/69. Exhibit A.	filed
Dec.	15	Response of conservator conservator to petition of attorney, ad litem for plaintiff; c/m 12/11/69.	filed
Dec.	15	Response of conservator to petition of attorney, ad litem counsel; c/m 12-19-69. Filed	filed
Dec.	15	Response of conservator conservator to petition of attorney, ad litem for plaintiff; c/m 12-19-69.	filed

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(See next page)

CIVIL DOCKET

United States District Court for the District of Columbia

Date	Case No.	Supplemental Page No.
12-11-69	696-69	5
Dec. 15	Response of successor conservator to motion for injunction and motion for cancellation of my rejected conservation plan on 12-15-69.	102
Dec. 16	Points and authorities in response to reply of opposition to rejection of my plan on 12-16-69.	102
Dec. 17	Motion of James Hamilton for leave to file opposition to petition for reimbursement; claim 12-11-69. (filed Nov. 27, 1969)	102
Dec. 17	Opposition to petition and countermotion of Otto Meyer for reimbursement; claim 12-11-69. (filed Nov. 27, 1969)	102
Dec. 17	Order referring to auditor for review and recommendation as to whether or not compensation should be granted; motion for an injunction. See, the motion for compensation filed on Nov. 12, 1969, by Otto Meyer, on Dec. 4, 1969, by William Thomas Payne, on Dec. 17, 1969, by John Tolentino, (his) (and) McShire, et al.	102
Dec. 17	Petition of guardian ad litem for additional fee.	102

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- Nov. 7. Order allowing withdrawal of cash balance for payment of certain expenses: unneeded balance to be deposited.
- Dec. 22. Record on appeal delivered to U.S.C.A.; deposit by Wm. Howard Payne \$2.30.
- Dec. 22. Receipt from U.S.C.A. for original record.
- Dec. 30. Motion for order for sale or permanent property of Ward filed
- Dec. 30. Petition for extension of time within which to file 60-day report filed under Rule 22.

(Filed July 22, 1969)

(Caption Ommitted in Printing)

PETITION OF NEXT-OF-KIN OF WARD
FOR REMOVAL OF CONSERVATOR ON
GROUNDS, INTER ALIA, OF FAULTY
NOTICE, CONFLICT OF INTEREST,
AND INSUFFICIENCY OF BOND; AND
FOR APPOINTMENT OF SUCCESSOR

Comes now Otto Meyer, an heir-at-law and next-of-kin of Agnes M. Driscoll, and petitions this Honorable Court for an Order removing James Hamilton as Conservator for the Estate of Agnes M. Driscoll and appointing The First National Bank of Washington as successor Conservator, and for other relief as prayed below, and as grounds therefor alleges as follows:

1. Petitioner is the brother of Agnes M. Driscoll.
2. Agnes M. Driscoll is a widow 79 years of age, without living issue or antecedents.

3. The heirs-at-law and next-of-kin of Agnes M. Driscoll are:

- A. Petitioner, whose address is 70 Salem Lane, Little Silver, New Jersey - brother.

- B. Mary Meyer Mellott, whose address is 2569 North High Street, Apartment C, Columbus, Ohio 43202 - sister.
- C. Margaret Ann Hamilton - sister. Mrs. Hamilton is presently in a nursing home; her affairs are in the hands of James Hamilton, who is Conservator for her Estate as well as for the Estate of Agnes M. Driscoll. Both Conservatorships arose out of petitions filed in this Court on March 19, 1969; Mrs. Hamilton's Conservatorship bears Civil Action No. 695-69.
- D. Children of George Meyer - deceased brother:
- (1) George Meyer, Jr., whose address is
P.O. Box 117
Oak Hill, Ohio 45656
 - (2) Mary Margaret Cleary, whose address is
4194 Carroll Blvd
University Heights, Ohio

E. Children of Lucy M. Grier - deceased sister:

(1) Alexander Grier, whose address is

Hawkhurst Road, R.D. 2
Monroe, New York 10950

(2) Lucy Grier Johnson, whose address is

482 Wripperin Court
Bloomfield Hills, Michigan 48013

All of said heirs-at-law and next-of-kin are over the age of twenty-one years.

4. The Petition for Appointment of James Hamilton as Conservator for the Estate of Agnes M. Driscoll was filed herein by Marion Edwyn Harrison, Esquire, attorney for James Hamilton, on March 19, 1969. In response thereto, this Court, on March 20, 1969, passed its Order appointing John H. Treanor, Jr., Esquire, as Guardian Ad Litem for Agnes M. Driscoll, and setting April 10, 1969, at 10:00 a.m. as the time for hearing by this Court on said Petition, "provided that notice of said hearing be mailed by certified mail to all the heirs-at-law and/or next-of-kin of said Agnes M. Driscoll and to said Agnes M. Driscoll at least 14 days prior to said hearing."

5. On March 19, 1969, Marion Edwyn Harrison, Esquire, mailed notice of said hearing unto Otto Meyer, Mary Meyer Mellott, Margaret Ann Hamilton and Agnes M. Driscoll. On the same day, Mr. Harrison also mailed notice of hearing, likewise set for April 10, 1969, at 10:00 a.m., on his petition to appoint James Hamilton as Conservator for the Estate of Margaret Ann Hamilton, unto Otto Meyer, Mary Meyer Mellott, and Agnes M. Driscoll (and to Margaret Ann Hamilton on March 24, 1969).

6. No notice was sent to George Meyer, Jr., Mary Margaret Cleary, Alexander Greer, or Lucy Greer Johnson, all of whom are heirs-at-law and next-of-kin of Agnes M. Driscoll, in spite of the Order of this Court that notice be mailed to all the heirs-at-law and/or next-of-kin of Agnes M. Driscoll.

7. On or about April 9, 1969, petitioner Otto Meyer telephoned the home of James Hamilton to confirm the time and place of the hearing set for April 10, 1969. He was advised by Nancy E. Hamilton, wife of James Hamilton, that:

A. The hearing set for 10:00 a.m. on April 10, 1969, had been postponed; and

B. Otto Meyer would be advised as to a new date and time for hearing, when same were established.

5. On April 10, 1969, contrary to the advices given Otto Meyer by Nancy Hamilton, this matter was brought before this Court, which received Report of Guardian Ad Litem and Inventory of Assets, and passed its Order appointing James Hamilton as Conservator for the Estate of Agnes M. Driscoll, and establishing bond at \$160,000.00. .

9. In his Report, the Guardian Ad Litem recited that:

A. "The petitioner, James Hamilton, is the chief beneficiary of the last know Will and Testament of his aunt, Mrs. Driscoll. (See attached copy)"

B. "Your Guardian Ad Litem has further learned that Mrs. Dricoll's nearest relatives or next of kin, Mr. Otto Meyer, brother, and Mrs. Mary M. Mellott, sister, have no objection to the appointment of James Hamilton as Conservator."

10. The Guardian Ad Litem erred. The facts are:
- A. There is attached hereto a copy of a hand-written document captioned "Last Will and Testament of Agnes M. Driscoll," which document bears the date June 9, 1965. [This appears to be the document which the Guardian Ad Litem intended to, but did not, file herein attached to his Report.] Petitioner Otto Meyer is advised that the real property which is the subject of Items 2 and 3 of said document is not now owned by Agnes M. Driscoll, and that assuming arguendo that this document is a valid Will, it will serve only to nominate an Executor, there being no functioning dispositive clauses therein. It is therefore not the fact that James Hamilton is the chief beneficiary of Mrs. Driscoll's Will; he is not a beneficiary at all, nor is he her heir-at-law while his mother, Margaret Ann Hamilton, survives.

B. The Guardian Ad Litem made no contact whatsoever with Otto Meyer or with Mary Meyer Mellott. Had he done so, he would have learned that both of them had serious reservations as to the appointment of James Hamilton as Conservator for the Estate of Agnes M. Driscoll, and that Otto Meyer intended to attend the hearing on April 10, 1969, to make his reservations known to the Court.

II. The interests of James Hamilton are in serious conflict with the interests of Agnes M. Driscoll in a number of respects, to wit:

A. Stocks and bonds as scheduled on Sixty-Day Report under Rule 22, filed herein by James Hamilton, to a total reported value of \$139,990.20 on June 24, 1969, are held by Ferris & Company in Account No. 19844-18, which is an account in the name of Agnes M. Driscoll and James Hamilton, Joint Tenants. Petitioner Otto Meyer is advised and therefore avers that James Hamilton has at various times taken four distinct and conflicting positions with respect to these assets, as follows:

- (1) Mrs. Driscoll gave them to him.
- (2) Mrs. Driscoll gave him a half interest in them.
- (3) Mrs. Driscoll wants him to have them upon her death.
- (4) He contributed between \$3,000 and \$4,000 to the securities account, and claims ownership only to that extent; beyond that, Mrs. Driscoll is the outright owner of these assets.

As Conservator for the Estate of Agnes M. Driscoll, his joint tenant in this account, James Hamilton is in the position of resolving ownership of these assets as best accommodates his personal interest, a position in clear conflict with the interests of Agnes M. Driscoll.

B. Bank deposits are scheduled on said Sixty-Day Report, to a total reported value of \$132,127.83, in the National Bank of Washington, held in the names of Agnes M. Driscoll or Mary R. Meyer (Mellott) or Margaret M. Hamilton

[i. e., Margaret Ann Hamilton]. Petitioner Otto Meyer believes and therefore avers that these funds are the sole property of Agnes M. Driscoll; in his capacity as Conservator for the Estates of both Agnes M. Driscoll and Margaret Ann Hamilton, and as the sole heir of Margaret Ann Hamilton, James Hamilton has clearly conflicting interests with respect to these funds.

C. United States Savings Bonds are scheduled on said Sixty-Day Report, to a total reported value of \$2,080.30, in the names of Agnes M. Driscoll and Margaret M. Hamilton. In his capacities as aforesaid, James Hamilton has clearly conflicting interests with respect to these bonds, which are inventoried in the Sixty-Day Reports filed by James Hamilton in both Conservatorships.

D. Gifts of \$3,000.00 to Margaret M. Hamilton and to Mary R. Meyer on March 4, 1969, are reported in said Sixty-Day Report. The Report of Guardian Ad.Litem casts serious doubt as to the donative capacity of Agnes M. Driscoll on March 4, 1969; the question of the validity of the gift to Margaret Ann Hamilton raises questions of conflict of interest as to James Hamilton; as her Conservator and sole heir.

E. In the document purporting to be the Last Will and Testament of Agnes M. Driscoll (copy attached), two devises of real property in Virginia are recited. Petitioner Otto Meyer is advised, and therefore avers, that the real property described in Item 2 was the subject of a transfer of record title, presumably by putative gift, from Agnes M. Driscoll to James R. Hamilton and Nancy E. Hamilton, tenants by the entirety, whereafter it was condemned by the Fairfax County Park Authority, with the proceeds of condemnation paid over to the Hamiltons. There are serious questions as to the donative capacity of Agnes M. Driscoll, and as to undue influence, at the time the transfer to the Hamiltons was made; the conflict of interest between Agnes M. Driscoll and James and Nancy Hamilton with respect to this transaction seems manifest.

F. In said document purporting to be the Last Will and Testament of Agnes M. Driscoll, the real property described in Item 3 was the subject of a transfer of record title, presumably by putative gift, from Agnes M. Driscoll to James R. Hamilton and Nancy E. Hamilton, tenants by the entirety. There are serious questions as to the donative

capacity of Agnes M. Driscoll, and as to undue influence, at the time the transfer to the Hamiltons was made; the conflict of interest between Agnes M. Driscoll and James and Nancy Hamilton seems manifest.

G. Petitioner Otto Meyer is advised and therefore avers that numerous other real properties, including lots in Braddock Woods, Virginia, and property in Clifton, Virginia, have been the subjects of transfers of record title, presumably by putative gifts, from Agnes M. Driscoll to James R. Hamilton and Nancy E. Hamilton, tenants by the entirety. There are serious questions as to the donative capacity, and as to undue influence, with respect to these transfers; the conflict of interest between Agnes M. Driscoll and James and Nancy Hamilton with respect to these transactions seem manifest.

12. As appears from the Sixty-Day Report filed herein, the undertaking filed by James Hamilton is vastly inadequate, being in the amount of \$160,000.00 as compared with reported estate values of \$302,929.76.

13. Petitioner Otto Meyer avers that in view of the financial interrelationships manifest in the Sixty-Day Report filed herein, an unrelated corporate fiduciary should take over the Conservatorship for the Estate of Agnes M. Driscoll; to which end he has obtained the agreement of The First National Bank of Washington so to serve.

14. Agnes M. Driscoll has for many years shared an apartment with Margaret Ann Hamilton, her sister. At the time the Petitions for Appointment of Conservator were filed in this cause and In re the Matter of Margaret Ann Hamilton (Civil Action No. 695-69), on March 19, 1969, Margaret Ann Hamilton was hospitalized; since that time, Margaret Ann Hamilton has been removed to a nursing home. Since his appointment as Conservator herein, James Hamilton has provided Agnes M. Driscoll with some daytime attendance, but she lives alone at night. Petitioner Otto Meyer avers that Agnes M. Driscoll is not safe living alone; that he and his wife have offered to have Agnes M. Driscoll live with them; that Agnes M. Driscoll desires so to do; and that it is in her best interests so to do.

WHEREFORE, petitioner Otto Meyer prays this Honorable Court for an Order:

1. Removing James Hamilton as Conservator for the Estate of Agnes M. Driscoll.
2. Appointing The First National Bank of Washington as successor Conservator for the Estate of Agnes M. Driscoll.
3. Directing James Hamilton to turn over to The First National Bank of Washington, forthwith, all of the assets of the Estate of Agnes M. Driscoll in his hands and/or under his control; and to file an account with the Court Auditor within 30 days.
4. Authorizing Otto Meyer to take Agnes M. Driscoll to New Jersey to live with him and his wife.
5. And for such other relief as to the Court shall seem mete and proper.

(Subscriptions Omitted in Printing)

June 9, 1965

Last Will & Testament of Agnes M. Dinsdale.

Agnes M. Dinsdale of Washington, District of Columbia, do
make, publish, and declare this my last Will and Testament.

1. I direct the payment of all my just debts and expenses.
2. I give and bequeath to my nephew, James Russell Hamilton,
922-Frederick S.W., Vienna, Virginia, the $6\frac{3}{4}$ acres
of land located on Court House Road in Fairfax County,
Virginia. It is located in McLean, Virginia, with the
exception of a few feet going down the hill beside the
Court House Road.
3. I give and bequeath to John Russell Hamilton, the son
of James Russell Hamilton, who lives with his parents
at 922-Frederick S.W., Vienna, Virginia; the 5 acres,
all of Lot 4 situated on a "Plot Adjoining Silvey and
Division of Part of the Estate of Grace J. Killen," attached
to the deed recorded among the land records of said
County of Fairfax in Deed Book 1568, at page 513.
4. I hereby nominate, constitute, and appoint my nephew,
James Russell Hamilton as Executor of this Will, and
I direct that he be exempt from giving security upon his
official bond as such Executor.

The witness whereof, I have hereunto subscribed my
Name and affixed my seal at Washington in the District
of Columbia, this 9th day of June, 1965, in the
presence of Mrs. Audrey Smith & Mrs. Regina Thomas
to whom I have requested to be their attesting
witnesses to this.

Agnes M. Triscoll
1210-25 St, N.W., Apt. 701,
Washington D.C. 20037

The foregoing instrument was subscribed, sealed,
and published, and declared by Agnes M. Triscoll as
and for her last Will and Testament in our presence
and in the presence of each of us, and we, at the same
time, at her request in her presence and in the
presence of each other, hereunto subscribe our names
and residences as attesting witnesses this
day of June 9. - 1965.

Name - Audrey N. Smith
Street - 201 H Street, N.W.
Place - Washington, D.C. 20037

Name - Regina Thomas
Street - Ph. 3 - Box 495
Place - Edgewater, Md.

(Filed July 25, 1969)

(Caption Omitted in Printing)

AFFIDAVIT OF HEIR-AT-LAW
AND NEXT-OF-KIN OF WARD
JOINING IN PRAYERS OF
PETITION OF OTTO MEYER TO
REMOVE CONSERVATOR AND
APPOINT SUCCESSOR CONSERVATOR

STATE OF OHIO)
) TO WIT:
COUNTY OF FRANKLIN)

Mary Meyer Mellott, being first duly sworn, does on
oath depose and say:

1. I am an heir-at-law and next-of-kin of Agnes M. Driscoll, being her sister.
2. I have read and am familiar with the contents of the PETITION OF NEXT-OF-KIN OF WARD FOR REMOVAL OF CONSERVATOR ON GROUNDS, ENTER ALIA, OF FAULTY NOTICE, CONFLICT OF INTEREST, AND INSUFFICIENCY OF BOND; AND FOR APPOINTMENT OF SUCCESSOR prepared by my brother, Otto Meyer, for filing in this Civil Action.
3. The matters and facts set out therein are true, to the best of my knowledge, information and belief.

4. I deem it critical to the welfare of my sister Agnes M. Driscoll and the protection and preservation of the assets constituting her estate that the prayers of Otto Meyer's Petition be granted by the Court; and I hereby join in those prayers.

(Subscription Omitted in Printing)

(Filed July 29, 1969)

(Caption Omitted in Printing)

AFFIDAVIT OF HEIR-AT-LAW
AND NEXT-OF-KIN OF WARD
JOINING IN PRAYERS OF
PETITION OF OTTO MEYER TO
REMOVE CONSERVATOR AND
APPOINT SUCCESSOR CONSERVATOR

STATE OF OHIO)
) TO WIT:
COUNTY OF JACKSON)

George Meyer, Jr., being first duly sworn, does on oath depose and say:

1. I am an heir-at-law and next-of-kin of Agnes M. Driscoll, being the son of her deceased brother George Meyer.

2. I have read and am familiar with the contents of the PETITION OF NEXT-OF-KIN OF WARD FOR REMOVAL OF CONSERVATOR ON GROUNDS, INTER ALIA, OF FAULTY NOTICE, CONFLICT OF INTEREST, AND INSUFFICIENCY OF BOND; AND FOR APPOINTMENT OF SUCCESSOR prepared by my uncle, Otto Meyer, for filing in this Civil Action.

3. To the best of my knowledge, information and belief, the matters set out therein are true; specifically, no notice was received by me as to a hearing to be held in this Court on April 10, 1969, with respect to the appointment of James Hamilton as Conservator for the Estate of Agnes M. Driscoll.

4. I deem it critical to the welfare of my aunt Agnes M. Driscoll and the protection and preservation of the assets constituting her estate that the prayers of Otto Meyer's Petition be granted by the Court; and I hereby join in those prayers.

(Subscriptions Omitted in Printing)

(Filed July 29, 1969)

(Caption Omitted in Printing)

AFFIDAVIT OF HEIR-AT-LAW
AND NEXT-OF-KIN OF WARD
JOINING IN PRAYERS OF
PETITION OF OTTO MEYER TO
REMOVE CONSERVATOR AND
APPOINT SUCCESSOR CONSERVATOR

STATE OF OHIO)
) TO WIT:
COUNTY OF CUYAHOGA)

Mary Margaret Cleary, being first duly sworn, does on
oath depose and say:

1. I am an heir-at-law and next-of-kin of Agnes M. Driscoll,
being the daughter of her deceased brother George Meyer.
2. I have read and am familiar with the contents of
the PETITION OF NEXT-OF-KIN OF WARD FOR REMOVAL OF CONSERVA-
TOR ON GROUNDS, ENTER ALIA, OF FAULTY NOTICE, CONFLICT OF
INTEREST, AND INSUFFICIENCY OF BOND; AND FOR APPOINTMENT OF
SUCCESSOR prepared by my uncle, Otto Meyer, for filing in this
Civil Action.
3. To the best of my knowledge, information and belief,
the matters set out therein are true; specifically, no notice
was received by me as to a hearing to be held in this Court on
April 10, 1969, with respect to the appointment of James

Hamilton as Conservator for the Estate of Agnes M. Driscoll.

4. I deem it critical to the welfare of my aunt Agnes M. Driscoll and the protection and preservation of the assets constituting her estate that the prayers of Otto Meyer's Petition be granted by the Court; and I hereby join in those prayers.

(Subscription Omitted in Printing)

(Filed August 6, 1969)

(Caption Omitted in Printing)

AFFIDAVIT OF HEIR-AT-LAW
AND NEXT-OF-KIN OF WARD
JOINING IN PRAYERS OF
PETITION OF OTTO MEYER TO
REMOVE CONSERVATOR AND
APPOINT SUCCESSOR CONSERVATOR

STATE OF MICHIGAN)
) TO WIT:
COUNTY OF OAKLAND)

Lucy Grier Johnson, being first duly sworn, does on
oath depose and say:

1. I am an heir-at-law and next-of-kin of Agnes M. Driscoll, being the daughter of her deceased sister Lucy M. Grier.

2. I have read and am familiar with the contents of THE PETITION OF NEXT-OF-KIN OF WARD FOR REMOVAL OF CONSERVATOR ON GROUNDS, INTER ALIA, OF FAULTY NOTICE, CONFLICT OF INTEREST, AND INSUFFICIENCY OF BOND; AND FOR APPOINTMENT OF SUCCESSOR prepared by my uncle, Otto Meyer, for filing in this Civil Action.

3. To the best of my knowledge, information and belief, the matters set out therein are true; specifically, no notice was received by me as to a hearing to be held in this Court on April 10, 1969, with respect to the appointment of James Hamilton as Conservator for the Estate of Agnes M. Driscoll.

4. I deem it critical to the welfare of my aunt Agnes M. Driscoll and the protection and preservation of the assets constituting her estate that the prayers of Otto Meyer's Petition be granted by the Court; and I hereby join in those prayers.

(Subscriptions Omitted in Printing)

(Filed August 6, 1969)

(Caption Omitted in Printing)

AFFIDAVIT OF HEIR-AT-LAW
AND NEXT-OF-KIN OF WARD
JOINING IN PRAYERS OF
PETITION OF OTTO MEYER TO
REMOVE CONSERVATOR AND
APPOINT SUCCESSOR CONSERVATOR

STATE OF NEW YORK)
) TO WIT:
COUNTY OF ORANGE)

Alexander S. Grier, Jr., being first duly sworn, does
on oath depose and say:

1. I am an heir-at-law and next-of-kin of Agnes M. Driscoll, being the son of her deceased sister Lucy M. Grier.
2. I have read and am familiar with the contents of the PETITION OF NEXT-OF-KIN OF WARD FOR REMOVAL OF CONSERVATOR ON GROUNDS, INTER ALIA, OF FAULTY NOTICE, CONFLICT OF INTEREST, AND INSUFFICIENCY OF BOND; AND FOR APPOINTMENT OF SUCCESSOR prepared by my uncle, Otto Meyer, for filing in this Civil Action.
3. To the best of my knowledge, information and belief, the matters set out therein are true; specifically, no notice was received by me as to a hearing to be held in this Court on

April 10, 1969, with respect to the appointment of James Hamilton as Conservator for the Estate of Agnes M. Driscoll.

4. I deem it critical to the welfare of my aunt Agnes M. Driscoll and the protection and preservation of the assets constituting her estate that the prayers of Otto Meyer's Petition be granted by the Court; and I hereby join in those prayers.

(Subscriptions Omitted in Printing)

(Filed August 25, 1969)

(Caption Omitted in Printing)

THE CONSERVATOR JAMES R. HAMILTON'S
RESPONSE TO THE PETITION OF OTTO MEYER

Comes now the Conservator James R. Hamilton by his attorney William Howard Payne and responds to the petition of Otto Meyer as follows:

First Defense

The petition fails to state a claim against the Respondent upon which relief can be granted.

Second Defense

The Petitioner Otto Meyer has no standing to petition the Court. Petitioner Otto Meyer was duly served with notice of the Court's hearing on the appointment of James R. Hamilton as Conservator of the estate and person of Agnes M. Driscoll. Otto Meyer admits he received the notice. He admits he was not present at said hearing. He seeks to excuse his failure to appear by stating that upon calling Nancy Hamilton on or about April 9, 1969 he was informed that the hearing had been postponed. This is denied and the affidavit of Nancy Hamilton is annexed hereto. In any event, such allegations do not excuse Petitioner's failure to appear at the time for which he admits he had notice. If it be true that children of a deceased brother and sister should have been notified of the hearing no blame can be attached to the Conservator who was advised by previous Counsel. In addition, the Guardian Ad Litem raised no question about the notice and responded to a direct question by Nancy E. Hamilton that notification of the children of the deceased brother and sister was not necessary. The notice was not defective as to Petitioner, he did not appear at the hearing, and he is accordingly foreclosed from challenging the appointment of James R. Hamilton as Conservator.

Third Defense

The following numbers correspond to numbers in the petition:

1. Admitted
2. Admitted

3. Respondent is without knowledge or information sufficient to form a belief as to the allegations in this paragraph.
"Margaret Ann Hamilton" (sister of Petitioner) should read "Margaret M. Hamilton" in this paragraph throughout petition.
4. Admitted
5. Admitted
6. Respondent is without knowledge or information sufficient to form a belief as to the allegations in this paragraph.
7. Denied. (See affidavit of Nancy Hamilton annexed hereto.)
8. Respondent admits that a hearing was held on the appointment of James R. Hamilton as Conservator of the Estate of Agnes M. Driscoll on April 10, 1969 at which time the report of the Guardian Ad Litem and the Inventory of Assets was received and the Court passed its order appointing James Hamilton as Conservator of the estate of Agnes M. Driscoll and establishing bond at \$160,000.00. Every other allegation in paragraph (8) is denied.
9. Admitted
10. Respondent is without knowledge or information sufficient to form a belief as to the allegations contained in this paragraph.
11. A. The joint stock account (in the correct amount) held by the Conservator with Agnes M. Driscoll will not be used for any purpose except the support of Agnes M. Driscoll, if necessary.

and then only with the approval of the Court; accordingly the account is "frozen" and no conflict can exist. The Conservator admits that he contributed approximately \$4000 to the securities account.

- B. Respondent admits that the funds in the joint bank account (in the correct amount) were contributed by and are solely the property of Agnes M. Driscoll. There is no conflict of interest because the said bank account will be used only for the support of Agnes M. Driscoll and then only with Court approval and accordingly the account is "frozen" and no conflict can exist.
- C. Respondent states that he does not know the source of the funds used for the purchase of the bonds in the amount of \$2,080.80 in the names of Agnes M. Driscoll and Margaret M. Hamilton. There is no conflict of interest because the said bonds will be "frozen" and the Conservator sees no need to use these funds in the foreseeable future. If such a need arises application will be made to the Court.
- D. Respondent states that allegation by the petitioner with respect to gifts of \$3000.00 to Margaret M. Hamilton and to Mary R. Meyer made by Agnes M. Driscoll prior to the appointment of James R. Hamilton as Conservator are irrelevant to the qualifications of James R. Hamilton to serve as Conservator. Petitioner has not presented one fact which would tend

to show lack of donative capacity. Accordingly all charges of lack of capacity and conflict of interest are denied.

E. Respondent admits that over a period of years Agnes M. Driscoll has made a gift of five parcels of real estate to Respondent James R. Hamilton and to Nancy E. Hamilton, his wife. All such transfers were effectuated before James R. Hamilton became Conservator of the estate of Agnes M. Driscoll and are irrelevant to his qualifications to serve as Conservator. All transactions were handled by an attorney and appropriate gift taxes were paid. Petitioner has not presented one fact which would tend to show lack of donative capacity. Accordingly all charges of lack of capacity and conflict of interest are denied.

F. See "E" above.

G. See "E" above.

Every allegation in paragraph (11) not expressly admitted herein is denied.

12. The Respondent agrees that the undertaking filed by James R. Hamilton is inadequate and he will be guided by the Court's order in this respect.
13. The Respondent states that he and his Mother, Margaret M. Hamilton have lived with Agnes M. Driscoll beginning in the early 1940's for many years. Neither the Petitioner nor Mary Meyer Mallott nor the four children of the deceased brother and sister have lived in the Washington area. (Otto Mayer was stationed in Washington during World War II

for some months.) Except for rare visits they have never been close to Agnes M. Driscoll. Indeed both the Petitioner Otto Meyer and Mary Meyer urged the Respondent to become Conservator; it was only after the Inventory of Assets was filed that interest was expressed in the matter to the Respondent by the Petitioner. Respondent states that he has been extremely close to his aunt Agnes M. Driscoll for many years and believes it would be a grievous mistake to place the affairs of his aunt in an impersonal bank. To require her to move to New Jersey in the Respondent's opinion would be a catastrophe and contrary to her wishes expressed prior to her marked debility which occurred in 1959. Since July 23, 1969 Agnes M. Driscoll has been living in a private room at the Fairfax Nursing Home, Fairfax, Virginia, and there is no question about full time attendance. The Respondent and his wife live close by and regularly visit Agnes M. Driscoll. Mrs. Driscoll played an important role in the breaking of the Japanese Code by the United States during World War II (See The Code Breakers, published by Macmillan, 1969) and every consideration should be given to her. It is further pointed out that her sister Margaret M. Hamilton, with whom Agnes M. Driscoll lived approximately 27 years, and for whom the Respondent acts as Conservator by appointment of this Court, is also living at the Fairfax Nursing Home thus continuing the close association of many years. Respondent denies that Agnes M. Driscoll desires to live with Petitioner or that it is in her best interests to do so.

WHEREFORE, the Respondent prays for an Order:

1. Dismissing the Petition of Otto Meyer with costs.
2. "Freezing" the bank and securities joint accounts except for use in the care and maintenance of Agnes M. Driscoll with Court approval or, also with Court approval, to obtain a better return on investments.
3. "Freezing" the bonds in the name of Agnes M. Driscoll and Margaret M. Hamilton.
4. Setting an appropriate undertaking to be filed by James R. Hamilton.
5. For such other relief as to the Court may seem just and proper.

(Subscriptions Omitted in Printing)

(Filed August 25, 1969)

(Caption Omitted in Printing)

AFFIDAVIT OF NANCY E. HAMILTON

I, Nancy E. Hamilton, wife of James R. Hamilton, Conservator of the Estate and Person of Agnes M. Driscoll, first being sworn, do depose and say:

On or about April 6, 1969 I received a call from Otto Meyer. My husband was not present at the time. During the conversation, I stated to Mr. Meyer that there was a possibility of a change in the date of the hearing on Mr. Hamilton's appointment as Conservator in the matter of Agnes M. Driscoll and that if there were such a change I would let him know. There was no such change and therefore no reason to notify Mr. Meyer.

(Subscriptions Omitted in Printing)

(Filed September 22, 1969)

(Caption Omitted in Printing)

MOTION TO SET THE PETITION OF OTTO MEYER FOR HEARING ON THE CIVIL NON-JURY TRIAL CALENDAR AND FOR TAKING ORAL TESTIMONY ON THE PETITION

COMES NOW James Hamilton, Conservator, by his Attorney, William Howard Payne, and moves the Court for an order setting the Petition of Otto Meyer, filed herein, for hearing on the Civil Non-jury trial calendar and for taking oral testimony on the Petition, and for grounds therefor states:

1. The Petition of Otto Meyer is set for hearing on the Motions Calendar for October 2, 1969.

2. It appears from the record of the above entitled cause that issues of fact have developed herein.
3. Without taking of evidence and the findings of facts to be based thereon, argument on the applicable law cannot be made.
4. And for reasons to be made apparent at the hearing hereof.

(Subscriptions Omitted in Printing)

(Filed September 24, 1969)

(Caption Omitted in Printing)

NOTION TO SET THE PETITION OF OTTO MEYER FOR HEARING ON THE CIVIL NON-JURY TRIAL CALENDAR AND FOR TAKING ORAL TESTIMONY ON THE PETITION

POINTS and AUTHORITIES

In re the matter of George F. Marshall, C.A. No. 2979-63,
United States District Court for the District of Columbia.

(Subscriptions Omitted in Printing)

(Filed September 25, 1969)

(Caption Omitted in Printing)

**POINTS AND AUTHORITIES IN OPPOSITION
TO MOTION OF CONSERVATOR TO SET THE
PETITION OF OTTO MEYER FOR HEARING ON
THE CIVIL NON-JURY TRIAL CALENDAR
AND FOR TAKING ORAL TESTIMONY ON THE
PETITION**

It is respectfully submitted that it is difficult to see any motive for the filing of the instant Motion other than delay.

The Petition of Otto Meyer to remove the Conservator (Movant here) alleges six grounds for the removal of the Conservator, to wit:

1. Failure to comply with Order of this Court as to Notice of Hearing.
2. Misleading by Conservator's wife of Petitioner Otto Meyer as to cancellation of the hearing on the appointment of the Conservator.
3. Errors of fact in Report of Guardian Ad Litem.
4. Conflict of interest as to ownership and survivor rights in a \$140,000.00 joint account in the names of Conservator (individually) and ward (individually).

5. Conflict of interest as to ownership and survivor rights in joint accounts and U. S. Bonds in the names of ward and another ward of this same Conservator.

6. Conflict of interest as to validity of transfers of real property in Virginia, transferred from ward to Conservator and his wife, without consideration.

The Conservator (Movant here), in his Response to the Petition of Otto Meyer, and in his Deposition upon Oral Examination conducted on September 25, 1969, has taken positions with respect to these grounds as follows:

1. Blame placed on previous counsel (Response, Second Defense).

2. Misleading denied - but language which could easily have misled is set out in affidavit of Conservator's wife.

3. Conservator neither confirms nor denies.

4. Conservator appears to admit the joint ownership (Response, Third Defense, ¶ 11 A); claims a legal right to withdraw the assets individually (Deposition, pp. 51-61, reproduced in Points and Authorities in Support of Petition, on file herein); refuses to answer as to whether he claims ownership

and survivor rights (Deposition, pp. 51-61).

5. Conservator appears to admit the joint ownership (Response, Third Defense, ¶ 11 B and C), claiming he can better serve and eliminate conflict than could separate Conservators! (Memorandum of Points and Authorities in Support of Response to Petition of Otto Meyer, fourth paragraph).

6. Conservator admits the transactions, and that they were "gifts" (Response, Third Defense, ¶ 11 E); refuses to answer any questions with regard thereto (Deposition, pp. 5-7). Conservator's wife refuses likewise (Deposition of Nancy E. Hamilton, pp. 79-80).

The requirements re hearing and proof with respect to the Petition of Otto Meyer are set out at length, with citations, in the Points and Authorities in Support of Otto Meyer's Petition. No more is required than a hearing on the Motion or Petition which alleges grounds for removal of a Conservator. Should the Court wish to hear testimony same can clearly be taken; but it is respectfully submitted that the state of the record is such that only on Ground No. 2 is there a controverted issue of fact before the Court - and there are of record two depositions (Deposition of Otto Meyer; Deposition of Nancy E. Hamilton) and

two affidavits (Petition of Otto Meyer; Affidavit of Nancy E. Hamilton) on the issue.

Delay in hearing the Petition of Otto Meyer leaves Agnes M. Driscoll and her estate in parlous circumstance. It redounds only to the benefit of the Conservator, whose tenure in that position is opposed by all of the next-of-kin of Agnes M. Driscoll save only her sister Margaret Hamilton, whose person and property are in the hands of this same Conservator (Civil Action 695-69). It should not be countenanced by the Court.

(Subscriptions Omitted in Printing)

(Filed September 30, 1969)

(Caption Omitted in Printing)

SUPPLEMENTAL REPORT OF GUARDIAN AD LITEM

COMES NOW the Guardian ad Litem in the above entitled civil matter and informs the Court as follows:

1. At the time of the initial interview with Mr. James Hamilton and his attorney, Marion Harrison, Esquire,

1750 Pennsylvania Avenue, N.W., Washington, D.C., your
Guardian ad Litem inquired, among other things, as to the
identity of the next of kin of Mrs. Agnes M. Driscoll.
Your Guardian ad Litem's recollection is, and his notes
and the Guardian ad Litem's Report reflect, that the only
names furnished as next of kin were Mary Mellott, sister,
and Otto Meyer, brother. No mention was made of any other
next of kin. Further, your Guardian ad Litem informs the
Court that it is his information and belief that Mr. Marion
Harrison, Esquire, James Hamilton's prior attorney, had no
knowledge of the existence of persons other than Mrs. Mary
Mellott and Otto Meyer.

2. Your Guardian ad Litem relied upon the representa-
tions of Mr. Marion Harrison, Esquire, and Mr. James Hamilton
that all necessary parties had been notified and, specifically,
that Mary Mellott and Otto Meyer had no objection to the
appointment of James Hamilton as Conservator, since they
lived out of state and he, James Hamilton, had known Mrs.
Driscoll more intimately over the years and lived in closer
proximity to her. Your Guardian ad Litem made several
attempts to talk to both Mary Mellott and Otto Meyer by

telephone to no avail, when apparently no one was at home.

3. Further, your Guardian ad Litem informs the Court that in the list of assets, real and/or personal, furnished him by James Hamilton and his then attorney, Marion Harrison, no mention was ever made of certain valuable real property which was deeded to James Hamilton by Agnes Driscoll on May 23, 1966 (SEE ATTACHED - deeds numbered 15528, 15529, and 15530). James Hamilton has since expressed the opinion that these three parcels of realty are worth possibly in excess of Two Hundred Thousand Dollars (\$200,000.00).

Your Guardian ad Litem further informs the Court that besides the failing health of Mrs. Agnes Driscoll and the fact that she was then living alone following the hospitalization of her sister, one of the primary considerations for recommending the appointment of a Conservator was the fact that according to the medical opinion of a Doctor John A. Kneipp, she was incompetent to handle her own affairs (and had been since the time of a certain abortive attempt to transfer certain realty on or about April 18, 1966).

Thus, your Guardian ad Litem, learning belatedly of other transactions between James Hamilton and Agnes Driscoll at a time when, according to Doctor Kneipp Mrs. Driscoll was incompetent to handle her own affairs, feels that

full disclosure was not made to him at the time of his initial interviews with James Hamilton and his ~~ten~~ attorney, Marion Harrison. It is further your Guardian ad Litem's information and belief that Marion Harrison, Esquire, had no knowledge at the time of the filing of the petition originally and at the time of the hearing on the appointment of James Hamilton as Conservator, of the existence of the realty transferred on May 23, 1966, to James Hamilton by Mrs. Agnes Driscoll.

4. Your Guardian ad Litem further informs the Court that following the appointment of James Hamilton as Conservator in this matter, it came to his attention that James Hamilton had expressed his intention to claim as his own and indeed withdraw up to one half of the assets contained in a stock account listed in the inventory as the "Ferris Account". Further, your Guardian ad Litem has been informed recently by James Hamilton that in his opinion Mrs. Agnes Driscoll, in setting up this "Ferris Account" meant to give all the assets in this account to him and that while he would abide by any Court decision dispositive of this account, he nevertheless feels that Mrs. Driscoll "meant them to be his". Thus, there

appears to this Guardian ad Litem to be a direct conflict of interest involved. While James Hamilton has denied any intentions of withdrawing for his own use any of these assets, it is the opinion of your Guardian ad Litem that it is difficult for him to act in impartial fashion as concerns these assets.

5. Your Guardian ad Litem further informs the Court that Agnes Driscoll is now a patient, as is her sister, Margaret M. Hamilton, at the Fairfax Nursing Home in Fairfax, Virginia. According to Doctor Joseph T. Nichols, 100 East Charlotte Street, Sterling, Virginia, who is Mrs. Driscoll's physician at the Home, the elderly lady is in his words "badly deranged" and indeed in need of immediate hospitalization in an institution where she can be closely guarded and given round the clock care. According to Doctor Nichols, Mrs. Driscoll, who is an ambulatory patient at the Fairfax Nursing Home, is extremely disruptive, has attacked other patients, and shows great predilection for wandering out of the Home. It is further the opinion of Doctor Nichols that her mental state is such that it could make no difference to the lady who is handling her affairs.

It is further the opinion of Doctor Nichols that her mental condition is such that she could not live in a private home (as suggested by the petitioner, Otto Meyer) in a manner consistent with her own well-being and that of the host family. In short, Doctor Nichols feels she should be institutionalized and that, therefore, is the recommendation of your Guardian ad Litem, unless further and round the clock nursing care can be provided at the Fairfax Nursing Home, in a most individualized way.

While there is no question but what Mrs. Driscoll is very fond of James Hamilton, her nephew, and will benefit by oft repeated visits by him and his wife, yet your Guardian ad Litem sees no reason that would indicate that her mental and physical well-being would be better served by James Hamilton's remaining as Conservator.

6. The Court will note that James Hamilton was appointed Conservator of his mother's affairs coincidentally with his appointment as Conservator for Agnes Driscoll. The Court will further note that the several months since his appointment have seen the family embroiled in controversy and lawsuits over the affairs of Mrs. Agnes Driscoll. Keeping

in mind that James Hamilton is coincidentally the Conservator of his mother's assets (concerning which there is no dispute), it is now the opinion of your Guardian ad Litem that there is a real possibility that James Hamilton, with a family and a Government job, can better occupy his remaining time in his role as Conservator for his mother's affairs. It is the opinion of the Guardian ad Litem that he can better devote his duties to that end if free of the obligations inherent in his Conservatorship in the affairs of his aunt, Mrs. Driscoll.

7. In summary then, it is the opinion of the Guardian ad Litem that:

(a) Full disclosure was not made to your Guardian ad Litem by James Hamilton as concerns his role as donee of valuable realty; that full disclosure was not made to your Guardian ad Litem as to the existence of the children of a deceased brother and sister of Mrs. Agnes Driscoll; that Mr. James Hamilton's advancement of Mrs. Driscoll's psychiatric problems in April of 1966 as at least one of the reasons for the appointment of a Conservator is oddly inconsistent with his apparent role as donee of other undisclosed realty in

May of 1966.

(b) Upon information and belief, your Guardian ad Litem has reason to believe that James Hamilton's position as to the donative intent of Mrs. Driscoll as concerns the assets in the "Ferris Account" make it difficult for him to exercise unfettered devotion in a fiduciary sense in at least this portion of the affairs of Mrs. Agnes Driscoll.

(c) That your Guardian ad Litem's interview with Doctor Joseph T. Nichols reinforces the opinion that Mrs. Driscoll's welfare would not be affected by the appointment of a Conservator other than James Hamilton.

(d) It is the opinion, therefore, of your Guardian ad Litem that the interests of Mrs. Agnes Driscoll, and indeed all concerned, would be better served by the appointment of a Conservator more neutral in character.

Accordingly, your Guardian ad Litem recommends the appointment of any such institution or person as the Court may direct.

(Subscriptions Omitted in Printing)

155:28
THIS DEED

made and entered into this 23rd day of May, 1966, by and between AGNES M. DRISCOLL, widow and surviving tenant by the entirety, party of the first part, and JAMES R. HAMILTON and MARY E. HAMILTON, his wife, tenants by the entireties, parties of the second part.

WITNESSETH

that for and in consideration of the sum of \$10.00, cash in hand paid, and other good and valuable considerations, the receipt of all of which is hereby acknowledged, the party of the first part does hereby grant, bargain, sell and convey, with GENERAL WARRANTY OF TITLE, unto the parties of the second part as tenants by the entireties with the common law right of survivorship expressly retained, that is, in case of the death of either of the parties of the second part, title to the land hereby conveyed shall vest in the survivor in fee simple, all of that certain tract or parcel of land located in Centreville Magisterial District, Fairfax County, Virginia, with all rights, ways, easements, improvements and appurtenances thereunto belonging, and more particularly described as follows:

"Beginning at a point on the Southerly side of Clifton Road (Route 645), said point is the original Northeasterly corner of the colored cemetery plot; thence with the said side of the road, S. 67° 30' 49" E. 53.35 feet to the P. C. of a curve to the left having a radius of 656.85 feet, an arc of 230.44 feet, chord bearing S. 77° 33' 50" E. 229.26 feet; thence S. 87° 36' 51" E. 125.57 feet to the P. C. of a curve to the right having a radius of 1335.35 feet, an arc of 144.12 feet, chord bearing S. 84° 31' 20" E. 144.05 feet; thence S. 81° 25' 49" E. 104.65 feet to the P. C. of a curve to the right having a radius of 385.00 feet, an arc of 284.76 feet, chord bearing S. 60° 14' 29" E. 278.31 feet; thence S. 39° 03' 08" E. 599.57 feet; thence leaving the road and with a portion of the original Easterly line of the entire former Lee property, also a portion of the Westerly line of the property now in the name of Hunsberger, S. 1° 59' 05" W. 543.95 feet to a point on the original Southerly line of the entire Lee property, also on the Northerly line of the property now in the name of C. E. Smith, said point being also the original Southeasterly corner of the entire Lee property; thence with a portion of the Northerly line of said Smith, N. 59° 46' 04" W. 1665.60 feet to the original Southeasterly corner of the cemetery plot; thence with the Easterly line of the cemetery, N. 23° 47' 54" E. 456.97 feet to the point of beginning, containing 21.002 acres."

W.M. REEDMAN
A STEPHENS
ATTESTED, AT LAW
FAXON, REEDMAN

AND BEING the same land which was conveyed to Michael S. Driscoll and the party of the first part by Deed recorded in Deed Book 2001 at page 609 of the land records of Fairfax County, Virginia. The said Michael S. Driscoll departed this life on December 3, 1964.

REFERENCE is hereby made to the said deed for a further and more particular description of the land hereby conveyed.

The party of the first part covenants that she has the right to convey the said land, that the parties of the second part shall have quiet possession of the same, free from all encumbrances, and that she, the party of the first part, will execute such further assurances as may be deemed requisite.

WITNESS the following signature and seal:

Agnes M. Driscoll (SEAL)
Agnes M. Driscoll

STATE OF VIRGINIA,

COUNTY OF FAIRFAX, to-wit:

I, John C. Hartman, a Notary Public in and for the State and County aforesaid, whose Commission will expire on the 23rd day of Dec., 1966, do hereby certify that AGNES M. DRISCOLL, widow, whose name is signed to the foregoing Deed dated the 23rd day of Dec., 1966, personally appeared before me in my said County and acknowledged the same.

GIVEN under my hand this 23rd day of Dec.,
1966.

John C. Hartman
Notary Public

in the Clerk's Office of the Circuit Court of
Fairfax County, Virginia LIV 31 1966
This instrument was received and, with the
certificate annexed, admitted to record
Teste:

Thomas E. Jones, Jr.

WOOD, TETERMAN
& STEPHENS
ATTORNEYS AT LAW
Fairfax Virginia

2772 pg 88

15529

THIS DEED

Made and entered into this 23rd day of Mary, 1966, by and between AGNES M. DRISCOLL, widow and surviving tenant by the entire party of the first part, and JAMES R. HAMILTON and NANCY E. HAMILTON, his wife, tenants by the entireties, parties of the second part.

WITNESSETH

that for and in consideration of the sum of \$10.00, cash in hand paid, and other good and valuable considerations, the receipt of all of which is hereby acknowledged, the party of the first part does hereby grant, bargain, sell and convey, with GENERAL WARRANTY OF TITLE, unto the parties of the second part as tenants by the entireties with the common law right of survivorship expressly retained, that is, in case of the death of either of the parties of the second part, title to the land hereby conveyed shall vest in the survivor in fee simple, all of those certain tracts or parcels of land located in Centreville Magisterial District, Fairfax County, Virginia, with all rights, ways, easements, improvements and appurtenances thereto belonging, and more particularly described as follows:

Parcel No. 1:

"Beginning at a stone in the line of Mrs. Metzel (now the line of Taylor and Detwiler), at the Southeast corner of Lot No. 4; thence S. 67° 14' W., a distance of 1150.33 ft. to an iron pipe, the Southwest corner of said Lot No. 4; thence with the line of S. A. Payne (now Rhem), S. 17° 0' E., a distance of 1105.5 ft. to a flint stone, a corner to Alfred Beckwith (now C. B. Beckwith); thence with the line of Beckwith N. 71° 40' E. 812.42 ft. to a stone, a corner to the said Beckwith; thence with the line of Mrs. Metzel (now Taylor and Detwiler), N. 1° 34' W., a distance of 124' to the point of beginning, containing 25.66 acres."

LESS and EXCEPT, however, from the above described parcel numbered 1 that certain tract of land conveyed by deed recorded in Liber R, No. 10, at page 32 of the said land records, more particularly described as follows:

WILLIAM STEPHENS
ATTORNEY AT LAW
Fairfax, Virginia

"Beginning at 'A' a pipe set in the southwest side of the Kincheloe Road, a corner to the land of Vernon, from which the herein described parcel was cut off; thence with the line of Vernon S. 2° 44' E. 743.5 feet to a pipe set in the North East side of the said Kincheloe Road, a corner to Vernon in the line of William Detwiler; thence with the line of Detwiler N. 4° 31' E. 777.3 feet to a planted stone, a corner to Detwiler and Taylor; thence with the line of Taylor S. 71° 29' W. 102.0 feet to the point of beginning, containing 0.807 acres."

Parcel No. 2:

"All that certain lot or parcel of land located on the road leading from Clifton to Yates Ford Road, and adjoining the land conveyed to Amanda S. Detwiler by Robert L. Payne and Elizabeth N. Payne, his wife, by deed dated February 9, 1924, and recorded in Liber G, No. 9, page 259 of the land records of said County, containing 10.62/100 acres and 18.7/100 acres, said lot or parcel of land conveyed by this deed contains 50/100 of an acre, and is designated as Lot No. 19 on a plat made for Hickey and Kidwell by H. T. Bumpas, dated January 31, 1917."

AND BEING the same land conveyed to Michael B. Driscoll and the party of the first part by deed recorded in Deed Book No. 1913 at Page 587 of the land records of said county. The said Michael B. Driscoll departed this life on December 3, 1964.

REFERENCE is hereby made to the said deed for a further and more particular description of the land hereby conveyed.

The party of the first part covenants that she has the right to convey the said land, that the parties of the second part shall have quiet possession of the same, free from all encumbrances, and that she, the party of the first part, will execute such further assurances as may be deemed requisite.

WITNESS the following signature and seal:

Agnes M. Driscoll (SEAL)
Agnes M. Driscoll, widow

STATE OF VIRGINIA,
COUNTY OF FAIRFAX, to-wit:

I, Paul C. Easter, a Notary Public in and for the State and County aforesaid, do hereby certify that AGNES M. DRISCOLL, widow, whose name is signed to the foregoing deed dated 11/11/65, 1965, personally appeared before me in my said county and acknowledged the same.

GIVEN under my hand this 25th day of May, 1966.

Paul C. Easter
Notary Public
My Commission Expires 11/23/66.

In the Clerk's Office of the Circuit Court of Fairfax County, Virginia MAY 31 1966: 12:00 P.M.
This instrument was received on 11/11/65 with the
certificate annexed, admitted to record
Teste: John C. Easter

2772 page 30

15530

THIS DEED

Made and entered into this 23rd day of May, 1966, by and between AGNES M. DRISCOLL, widow and surviving tenant by the entirety, party of the first part, and JAMES R. HAMILTON and NANCY E. HAMILTON, his wife, tenants by the ~~entireties~~, parties of the second part.

WITNESSETH

That for and in consideration of the sum of \$10.00, cash in hand paid, other good and valuable considerations, the receipt of all of which is hereby acknowledged, the party of the first part does hereby grant, bargain, sell and convey, with GENERAL WARRANTY OF TITLE, unto the parties of the second part as tenants by the entireties with the common law right of survivorship expressly retained, that is, in case of the death of either of the parties of the second part, title to the land hereby conveyed shall vest in the survivor in fee simple, all of that certain lot or parcel of land located in Centreville Magisterial District, Fairfax County, Virginia, with all rights, ways, easements, improvements and appurtenances thereunto belonging, and more particularly described as follows:

Lots ONE (1), FIVE (5), SIX (6), SEVEN (7) and EIGHT (8) of the Subdivision of BRADDOCK WOODS, SECTION THREE (3), as shown by plat attached to a deed recorded in Deed Book No. 1850 at page 356 of the land records of Fairfax County, Virginia.

AND BEING the same land which was conveyed to Michael B. Driscoll and the party of the first part by deed recorded in Deed Book 1850 at page 356 and re-recorded in Deed Book No. 1961 at page 640. The said Michael B. Driscoll departed this life on December 3, 1964.

REFERENCE is hereby made to the said deed and plat for a further and more particular description of the land hereby conveyed.

WOOD, TROTTERMAN
& STEPHENS
ATTORNEYS AT LAW
Fairfax, Virginia

BEST CO
from the er

book 2772 page 91

The party of the first part covenants that she has the right to convey the said land, that the parties of the second part shall have quiet possession of the same, free from all encumbrances, and that she, the party of the first part, will execute such further assurances as may be deemed requisite.

WITNESS the following signature and seal:

(Agnes M. Driscoll) (SEAL)
Agnes M. Driscoll

STATE OF VIRGINIA,

COUNTY OF FAIRFAX) to-wit:

I, Albert L. Estes, a Notary Public in and for the State and County aforesaid, whose Commission will expire on the 23rd day of May, 1966, do hereby certify that AGNES M. DRISCOLL, widow, whose name is signed to the foregoing Deed dated the 23rd day of May, 1966, personally appeared before me in my said County and acknowledged the same.

GIVEN under my hand this 25th day of May, 1966.

Albert L. Estes
Notary Public

In the Clerk's Office of the Circuit Court of
Fairfax County, Virginia MAY 31 1966
This instrument was received and, with the
certificate annexed, admitted to record

Teste:

James A. Johnson Jr. Clerk

WOOD, TUCKERMAN
& STEPHENS
ATTORNEYS AT LAW
FAIRFAX, VIRGINIA

COPY AVAILABLE
Original bound volume

box2772 page 30

15530

THIS DEED

made and entered into this 23rd day of May, 1966, by and between AGNES M. DRISCOLL, widow and surviving tenant by the entirety, party of the first part, and JAMES R. HAMILTON and NANCY E. HAMILTON, his wife, tenants by the ~~entireties~~, parties of the second part.

WITNESSETH

that for and in consideration of the sum of \$10.00, cash in hand paid, other good and valuable considerations, the receipt of all of which is hereby acknowledged, the party of the first part does hereby grant, bargain, sell and convey, with GENERAL WARRANTY OF TITLE, unto the parties of the second part as tenants by the entireties with the common law right of survivorship expressly retained, that is, in case of the death of either of the parties of the second part, title to the land hereby conveyed shall vest in the survivor in fee simple, all of that certain lot or parcel of land located in Centreville Magisterial District, Fairfax County, Virginia, with all rights, ways, easements, improvements and appurtenances thereunto belonging, and more particularly described as follows:

Lots ONE (1), FIVE (5), SIX (6), SEVEN (7) and EIGHT (8) of the Subdivision of BRADDOCK WOODS, SECTION THREE (3), as shown by plat attached to a deed recorded in Deed Book No. 1850 at page 356 of the land records of Fairfax County, Virginia.

AND BEING the same land which was conveyed to Michael B. Driscoll and the party of the first part by deed recorded in Deed Book 1850 at page 356 and re-recorded in Deed Book No. 1961 at page 640. The said Michael B. Driscoll departed this life on December 3, 1964.

REFERENCE is hereby made to the said deed and plat for a further and more particular description of the land hereby conveyed.

WILLIAM T. ROVNER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
FALLS CHURCH, VIRGINIA

BEST CO
from the er

BOOK 2772 PAGE 91

The party of the first part covenants that she has the right to convey the said land, that the parties of the second part shall have quiet possession of the same, free from all encumbrances, and that she, the party of the first part, will execute such further assurances as may be deemed requisite.

WITNESS the following signature and seal:

(Agnes M. Driscoll) (SEAL)
Agnes M. Driscoll

STATE OF VIRGINIA,

COUNTY OF FAIRFAX) to-wit:

I, John C. Estes, a Notary Public in and for the State and County aforesaid, whose Commission will expire on the 23rd day of December, 1966, do hereby certify that AGNES M. DRISCOLL, widow, whose name is signed to the foregoing Deed dated the 23rd day of December, 1966, personally appeared before me in my said County and acknowledged the same.

GIVEN under my hand this 25th day of December, 1966.

John C. Estes
Notary Public

In the Clerk's Office of the Circuit Court of Fairfax County, Virginia MAY 31 1967
This instrument was received and, with the certificate annexed, admitted to record

Teste:

Thomas A. Johnson Jr. Clerk

WOOD, TESTERMAN
& STEPHENS
ATTORNEYS AT LAW
FALLS CHURCH, VIRGINIA

COPY AVAILABLE
Original bound volume

(Filed October 6, 1969)

(Caption Omitted in Printing)

MOTION FOR LEAVE TO FILE REPLY TO PARAGRAPHS 5 AND 7
(c) OF THE GUARDIAN AD LITEM'S SUPPLEMENTAL REPORT.

COMES NOW the Conservator by his attorney, William Howard Payne and moves the Court for leave to file a reply to paragraphs 5 and 7 (c) of the Guardian Ad Litem's Supplemental Report within 10 days from the date of granting of this motion. For grounds therefor the Conservator states:

1. The Guardian Ad Litem's Supplemental Report was not received by Counsel for the Conservator until approximately 5 p.m. October 1, 1969, the eve of the hearing in this matter. The Conservator himself had not had a chance to read the report until a few minutes before the hearing.
2. In the above-cited paragraph the Guardian Ad Litem recites the opinion of Dr. Joseph T. Nichols as understood by the Guardian Ad Litem. It is respectfully submitted that Conservator should have an opportunity to reply to such statements of reported medical opinion.

(Subscriptions Omitted in Printing)

(Filed October 6, 1969)

(Caption Omitted in Printing)

POINTS AND AUTHORITIES

Rule 9 of the Rules of this Court.

(Subscriptions Omitted in Printing)

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(Filed October 21, 1969)

(Caption Omitted in Printing)

ORDER

Upon consideration of the petition filed by Otto Meyer herein, the affidavits in support thereof, the response of the Conservator thereto, and the depositions of James R. Hamilton, Nancy Z. Hamilton, and Otto Meyer, and testimony having been taken and oral argument having been heard in open court; and upon consideration of the supplemental report of guardian ad litem filed herein; and it appearing to the Court that there exists a conflict of interest between James R. Hamilton and Agnes M. Driscoll, and that there exists a conflict of interest between James R. Hamilton as Conservator in this cause and as Conservator the the Matter of Margaret Ann Hamilton, Civil Action No. 695-69:

It is by the Court this 21st day of October, 1969,

ADJUDGED, ORDERED AND DICTINED:

1. That James R. Hamilton be, and he is hereby, removed as Conservator of the person and estate of Agnes M. Driscoll, effective upon the signing of this order.
2. That James R. Hamilton forthwith, within 15 days from the date of this order, turn over to the said Successor Conservator all of the assets and property of Agnes M. Driscoll in his possession and/or under his control, including but not limited to

all bankbooks and passbooks for the bank accounts and savings and loan association accounts scheduled on the Sixty-Day Report filed herein by James R. Hamilton; all securities and moneys held by him as Conservator herein; and all papers, books, records and documents belonging to Agnes M. Driscoll, including that paper writing purporting to be her will.

3. That James R. Hamilton, within 30 days from the date of this order, render the Final Account of his Conservatorship to the Court Auditor.

/s/ John J. Sirica

United States District Judge

(Filed October 21, 1969)

(Caption Omitted in Printing)

ORDER

This matter having come on for hearing on the 2nd day of October, 1969, and the Court having decided that a successor conservator should be appointed for Agnes M. Driscoll, it is this 21st day of October, 1969,

ORDERED that Herbert John Miller, Jr. is hereby appointed successor conservator for Agnes M. Driscoll, provided he first file an undertaking with approved surety in the sum of Three-Hundred Twenty-five Thousand Dollars (\$ 325,000.00).

/s/ John J. Sirica

United States District Judge

(Filed October 30, 1969)

(Caption Omitted in Printing)

ORDER

Upon consideration of the motion by the Conservator for leave to file a reply to paragraphs 5 and 7(c) of the guardian ad litem's supplementary report filed herein it is this 16th day of October, 1969

ORDERED that the Conservator may reply to paragraphs 5 and 7(c) of theforesaid supplementary report within ten days or to and including October 27, 1969.

John J. Sirica
John J. Sirica
Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----x
In re the matter of :
AGNES M. DRISCOLL : Civil Action No. 696-69
1010 25th Street NW :
Washington, D.C. :
-----x

Monday, September 29, 1969

The above-entitled cause came on for hearing on Motion
before THE HONORABLE JOHN J. SIRICA, United States District
Court Judge, at 10:00 o'clock a.m.

APPEARANCES:

WILLIAM B. WOLF, Esq., and JOAN Z. BERNSTEIN, Esq.

CHARLES E. ROBBINS, Esq.

JOHN TREANOR, Esq.

P R O C E E D I N G S

THE COURT: State your name for the record.

MR. ROBBINS: Your Honor, I am Charles E. Robbins, I am appearing for Mr. William Howard Payne who is attorney of record in this case.

This, Your Honor, is a motion which has been set here this morning for --

THE COURT: Who filed the motion?

MR. ROBBINS: I filed the motion, Your Honor, to place this case on the civil non-jury calendar set for hearing on the motions calendar at the present time on October 2nd.

THE COURT: That is Wednesday?

MR. ROBBINS: Thursday, Your Honor, I believe.

THE COURT: I'm sorry -- Thursday.

MR. ROBBINS: Every authority that I have been able to find, Your Honor, indicates that a hearing is in order in a case where there is an attempt to remove a guardian or a conservator, and I cite Brosnan vs Brosnan --

THE COURT: Counsel, I will save you a lot of time. Over the weekend I read the complete file of the case and know what the case is all about.

MR. ROBBINS: Yes, sir. Well, as I say, I feel that a hearing is in order in the case. We have no wish to delay in any manner. We are willing to have the case advanced. We

certainly need to know who the witnesses are, there are certain issues here as to apparently that Mr. Wolf wants to bring up issues such as undue influence which runs into the whole spectrum of evidence, it seems to me, and I feel that a hearing is in order in view of the authorities which is clear.

THE COURT: As I see it, there is nothing I have read in this file that indicates to me this case should be sent to a nonjury court for hearing. Why can't this court hear it?

MR. ROBBINS: I understand in the motions calendar witnesses are not heard, Your Honor.

THE COURT: What about applications for preliminary injunctions, we take testimony?

MR. ROBBINS: That is true, Your Honor, certain judges take testimony. However, we feel we are entitled to know what the witnesses are going to be so we will be able to refute it, the ordinary protections you have in a trial, and in addition, the authorities indicate that this is required.

THE COURT: I am ready to proceed with the hearing now and hear you on the merits. If I think you need to take testimony I will give you some time on that. I am ready to hear the case if you are ready. If I think you need to take testimony I will consider giving you some time on that.

MR. ROBBINS: Well, I assume you mean you are ready to hear it when it comes up on the motions calendar?

THE COURT: Yes, I'll hear it today if you want me to hear it. Are you ready to argue this morning?

MR. ROBBINS: No, Your Honor, we are not prepared, but I am still in the dark. Are we both going to appear without witnesses? Do I understand that to be true?

THE COURT: No. You can bring in your witnesses -- how much time do you think it is going to take?

MR. ROBBINS: That is the very reason we are asking this to be placed on the nonjury calendar, Your Honor.

THE COURT: I am not going to place it on the nonjury calendar, I already decided that.

MR. ROBBINS: Well, am I entitled to know who the witnesses are that will be presented by Mr. Wolf?

THE COURT: That is not my problem. How many witnesses--

MR. ROBBINS: In other words --

THE COURT: Just a minute, counsel, I am asking him a question. Counsel, (Mr. Wolf) how many witnesses do you expect to call?

MR. WOLF: I am bringing two witnesses, Your Honor, and they are short witnesses --they are the brother and sister of the Ward, Mrs. Driscoll. And I see no need to put on testimony, we have three depositions --

THE COURT: When is the case set for?

MR. ROBBIN: Thursday, Your Honor.

THE COURT: I'll hear the case starting at 1:45, Thursday, and by that time I think I might have finished my morning calendar. Bring your witnesses here and if we have to take

testimony we will take testimony in the afternoon.

MR. ROBBINS: Do I have time to issue subpoenas, Your Honor?

THE COURT: That is not my affair. When did you receive notice in this case?

MR. ROBBINS: Your Honor, I was going on authorities which I can cite. The only other case --

THE COURT: I read the authorities. I am not convinced you are right. I have decided the matter and I will hear the case at 1:45 on the afternoon the motion is set for trial. You ought to have your witnesses available.

MR. ROBBINS: May I ask Mr. Wolf so I will be absolutely clear which witnesses he will have in court?

MR. WOLF: Otto Meyer and Mrs. Mellott, if she can come from Columbus, Ohio. Mr. Meyer is coming from New Jersey.

THE COURT: Very well. The case will be heard at 1:45 on Thursday.

MR. ROBBINS: Thank you, Your Honor.

THE COURT: Mr. Treanor, I suggest you be here because it may be necessary to ask you some questions about the case.

Mr. Treanor, have you filed your Guardian report yet?

MR. TREANOR: I filed the original, if Your Honor pleases.

THE COURT: I tried to find it, I don't know whether I overlooked it or not.

(6)

MR. TREANOR: I have not filed a recent one as a result of what happened in the case.

THE COURT: Suppose you try to file an up-to-date one. You know what to file.

MR. TREANOR: Yes, I will have one filed.

THE COURT: All right.

* * *

(Recessed at 10:15 a.m.)

CERTIFICATE

It is certified the foregoing is the official transcript of the proceedings indicated.

Nicholas Sokal
NICHOLAS SOKAL
Official Reporter

BEST COPY
from the original

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

AGNES M. DFISCOLL

) Civil Action 696-69
)
)
)

Washington, D. C.

October 2, 1969.

The above cause came on for hearing before
THE HONORABLE JOHN J. SIRICA, United States District Judge,
commencing at 1:45 p.m.

Appearances:

WILLIAM B. WOLF, JR., ESQ.,
JOAN Z. BERNSTEIN, ESQ.

WILLIAM HOWARD PAYNE, ESQ.,
CHARLES E. ROBBINS, ESQ.

JOHN TREANOR, ESQ.
Guardian Ad Litem

- - -

PROCEEDINGS

THE DEPUTY CLERK: In Re Agnes M. Driscoll, Civil Action 696-69.

THE COURT: Would you like a rule on the witnesses in this case?

MR. WOLF: I don't believe so.

MR. ROBBINS: I would like to say, Your Honor, I just learned something coming down in the car and I want to -- I am not asking for a continuance but I want to bring it to the Court's attention, and that is, I am informed by Mr. Hamilton that there is another deceased brother who is not before the Court. His name is Gustave. He is deceased and my client tells me on information and belief he had a son. He was told this by the husband of Agnes Driscoll.

Other than that, I have nothing to offer.

Perhaps Mr. Wolf --

THE COURT: Do you want to say anything about that?

MR. WOLF: The information given to me by the heirs is that Gustave is dead and he has no heirs.

I really -- we could question the brother and the sister, if the Court would like information.

THE COURT: Mr. Treanor, have you anything to say?

MR. TREANOR: I never heard of it, Your Honor.

MR. ROBBINS: I do know there is a deceased brother Gustave. I am aware of that.

THE COURT: I don't think that should affect the proceedings today.

The question I have got to decide today is whether or not to remove the conservator. That is one of the points I have to decide.

MR. ROBBINS: Yes, Your Honor. Very well, Your Honor.

THE COURT: I will hear you. Proceed.

Who represents the moving party?

MR. WOLF: I do, sir. My name is William Wolf, Jr.

THE COURT: Tell me what your case is about or what you contend in this case and the relief you are requesting.

MR. WOLF: This is a petition filed on behalf of one of the next of kin of the ward, Agnes Driscoll, for the removal of the conservator on essentially six grounds and for the appointment of a successor conservator.

When the petition was initially filed it also included a prayer for the increase of bond, but I am advised that the bond was increased as a function of the auditor's report in the interim, so that is not germane to these proceedings.

In March of 1969 a petition was filed on behalf of the incumbent conservator, James Hamilton, by his then counsel, Marion Harrison, for his appointment as conservator and on April 10, 1969 he was appointed by this Court as the

conservator.

The petition is grounded on, as I say, six grounds for removal. Three of them have to do with the proceedings at which Mr. Hamilton was appointed conservator and three of them have to do with conflict of interest between Mr. Hamilton and the interests of the ward, Mrs. Driscoll.

The six grounds, if I may develop those, Your Honor, are as follows:

Firstly, the Court on March 20, 1969 passed its order setting April 10 as the date for hearing on the appointment of the conservator and in that order it decreed a proviso provided that notice of the hearing be mailed by certified mail to all the heirs at law and next of kin of the ward, Agnes Driscoll.

In the petition before the Court today allegation is made, and impliedly admitted in the response of the conservator, that four people who are heirs at law and next of kin of Agnes Meyer were not given notice, two of them being the children of one deceased sibling of Agnes Driscoll and two being the children of another deceased sibling of Agnes Driscoll.

Secondly, with respect to the hearing date of April 10, Mr. Meyer has alleged that he was advised over the telephone by the conservator's wife prior to the April 10 hearing that the hearing had been put off and that he would

be advised of another trial date. He has so testified in his sworn deposition which is of record.

Mrs. Hamilton, on the other hand, by affidavit which was attached to the response of the conservator and in her sworn deposition, testified that she had a conversation with Mr. Meyer and she indicated that the hearing might be postponed but she says that she did not say that it had been or would be postponed.

I am prepared to put on Mr. Meyer to testify as to what I just said, but I don't think we are going to get closer than that conflict.

My position is that the language was misleading without reference to intent, Mr. Meyer intending to come to Washington at that time.

THE COURT: Let me ask you a question. Let's get down to the real issue in the case.

You want the present conservator removed and another conservator appointed?

MR. WOLF: That is correct.

THE COURT: Do you have any evidence on the so-called grounds of conflict of interest? That is what I am interested in finding out.

MR. WOLF: Yes, I do, sir.

THE COURT: I don't think the other matter is too

important, what she said or what she didn't say.

MR. WOLF: I have evidence in three areas.

Firstly, when I looked into this matter upon being consulted, I read the file and the file contains the report of the guardian ad litem, Mr. Treanor.

In that report there is reference to a will of Mrs. Driscoll and there is the notation in the report: See attached copy. But through inadvertence no copy was attached.

I wanted to see that will and in a conference with Mr. Treanor, the guardian ad litem, and Mr. Harrison, who then represented the conservator, I asked for and was immediately given a copy of that document. It is appended to the petition of Otto Meyer. It makes reference to certain pieces of real property and in determining the fate of those pieces of real property I had the record searched.

I have here under triple seal from the Circuit Court of Fairfax, Virginia, five deeds, four of them dated May 23, 1966 and one dated July 24, 1967, certified by the clerk who certifies this --

THE COURT: There is a suit pending in Virginia, is there not?

MR. WOLF: Yes, sir.

THE COURT: What is the purpose of that suit?

MR. WOLF: The purpose of that suit is to divest

Mr. Hamilton and Mrs. Hamilton of title to the five pieces of real property that were conveyed to them without consideration by Mrs. Driscoll.

THE COURT: All right.

MR. WOLF: Discovering from the title company search of the records and later from the exposure to us of the deeds, it is apparent on the face of these documents that four of them were dated May 23, 1965.

That date is critical to the question of conflict of interest because appended to Mr. Treanor's report as guardian ad litem is a letter report of a Dr. Kneipp, a psychiatrist in Washington, setting forth as his opinion that Mrs. Driscoll was incompetent to transact business on May 19, 1966.

That report was obtained in connection with a matter I ask the Court to take judicial notice of, the case of Diamond v. Driscoll, 3245-66, a civil action in this court filed in 1966 in which Mrs. Driscoll was the defendant and for the purposes of which case that report appearing on the record of that case was obtained.

If Mrs. Driscoll was incompetent and urged in connection with court proceedings that she was incompetent on May 19, 1966, suffering from the type of disease outlined in four pages by Dr. Kneipp, then I maintain that the trans-

action four days later whereby she conveyed four pieces of real property to the Hamiltons, created a conflict of interest which survives today.

Secondly, there are in this conservatorship and in its companion conservatorship filed the same day, No. 695-69, conservatorship of Margaret Ann Hamilton, who is this conservator's mother and the sister of Agnes Driscoll, certain government bonds and certain bank accounts titled jointly in Driscoll and Hamilton. The bank account in question is titled in Driscoll, Hamilton and Mrs. Mellot, another sister, who sits in the rear of the room.

It is our contention that there is a conflict of interest with respect to ownership of, control over and ultimate disposition of these assets between the two conservatorships, Hamilton and Driscoll and that Mr. Hamilton's representation in points and authorities that he can better serve the conservatorships and eliminate conflicts of interest is only true toward his own ultimate gain, he being, it is represented to me, the sole heir and next of kin of Mrs. Hamilton, his mother.

Now, thirdly and of much greater dimension, it was advised to Mr. Meyer and to Mrs. Millot by telephone call from Marion Harrison, counsel for the conservator at that time, in June of 1969, that there was a stock account at Ferris & Co.,

stock brokers. The dimensions are in the 60-day report, approximately \$140,000 worth of securities.

The testimony will be that Mr. Harrison's purpose in telephoning was to advise Mr. Meyer and Mrs. Mellot that the conservator was laying claim personally to half or more of those assets and to ask if those persons knew whether or not Mrs. Driscoll had given an interest in those assets to Mr. Hamilton.

That is what precipitated our appearance here, this last item.

As the matter now stands of record, it is alleged that the conservator has taken four disparate positions with respect to ownership of assets of that stock account.

In his answer, sworn response, the conservator appears to admit joint ownership.

In his deposition, I have reproduced the germane portions in the points and authorities of the petitioner and I would have to characterize that testimony as claiming a legal right to withdraw those assets individually and refusing to answer any questions with respect to whether he claims ownership and survivor rights.

Those three assets, the Virginia property, the existence of which was not known to petitioner at the time the conservatorship was launched, the existence of which, I believe I quote correctly in the supplemental report, was

(10)

withheld from the guardian ad litem at the time this matter was initiated --

THE COURT: Was the fact of the transfer of the property withheld from the guardian ad litem? Do you have anything about that in the first report?

MR. WOLF: Not in the first report. I am sure he knew nothing of it because in the supplemental report on page 5 --

THE COURT: I have read the supplemental report.

MR. WOLF: There is no mention in the initial report, as I recall.

THE COURT: It is mentioned in the supplemental report.

MR. WOLF: Yes, sir, it is mentioned as not being fully disclosed to the guardian at the time he made his initial investigation.

Those are the facts of the matter, a series of contacts in which the best interests of the ward can only be served aggrandized or served at the expense of the conservator and vice versa.

THE COURT: I understand.

Do you want to make a statement, counsel?

MR. ROBBINS: We vigorously oppose this petition of Otto Meyer, Your Honor.

First, I would like to point out that at the time

Judge McGuire made the original appointment he was aware of the joint accounts.

Now, it is true the land was not mentioned in the original application, but certainly Mr. Hamilton will testify, I am sure, that his lawyer at the time --we are successor counsel-- was completely aware of all these circumstances.

And somewhat in expiation of what he did, I would say at the particular time that he was applying as a conservator, these land transactions had happened in '66 and '67. So, perhaps he felt they were not relevant to the application for the conservatorship for Mr. Hamilton. I am just speculating here.

But it should be pointed out that Mr. Hamilton made this completely available to his counsel.

Now, the letter of the physician of course was prepared in connection with litigation, as Mr. Wolf has stated.

I would also like to state that Mr. Hamilton in his application never submitted the letter of Dr. Kneipp in the application for the conservatorship. It was submitted as a part of the guardian ad litem's report.

THE COURT: What did the psychiatrist say about this lady or the ward's physical or mental condition? What was the substance of it?

MR. ROBBINS: I should say the report was prepared

in 1968 and was relating to her condition in 1966.

She was engaged in this realty transaction on April 18, 1966 and the date of Dr. Kneipp's letter was November 1st, 1968. In that letter he stated that she was suffering -- I am not going to have all the medical terms here, but old age, senility and inability to follow a logical thought pattern, although at certain times it was logical.

I think it is true even today that at times she is lucid and at times she is not.

I don't mean to say that her condition at the present time, at the time I saw her, is considerably debilitated, although Mr. Payne and I have both visited her, she recognized Mr. Hamilton when I visited her with Mr. Hamilton, she was extremely glad to see him and would carry on a conversation, although not always getting the right answers.

THE COURT: What was the consideration for the transfer of this property, which seems to be valuable property according to what I have read in the file here. What did Mr. Hamilton give in order to get the property, if anything, and what were the circumstances under which the property was transferred to your client? That is the most important thing.

MR. ROBBINS: Of course, that is the subject of two suits in the State of Virginia.

A question arises in my mind as to whether this

is applicable to this conservatorship application.

We have no intention of -- if they want to make these contentions of undue influence, they have every right to do that and I would be the first to support their position that they do have this right to have this question tested in the courts; but this occurred way back before.

THE COURT: That will be litigated in the Virginia courts in due time.

Now the question I have to decide is whether under the facts and the evidence in the case, whether I should remove Mr. Hamilton and appoint another conservator, not necessarily the one suggested by the moving party here.

I don't have to appoint a bank or any particular individual. I will make the selection, if I have to, at the proper time.

MR. ROBBINS: Yes, Your Honor.

Well, I think an inquiry at this point is, what is the situation, what occurs if Mr. Wolf's petition is granted. Can we assume that for just a moment. Assume that's happened. Well, I filed a supplemental pleading. I don't know if Your Honor has had a chance to look at it.

THE COURT: I have it in front of me.

MR. ROBBINS: Which is supplemental to our opposition.

THE COURT: Well, I will not appoint the First National Bank as conservator, if I have to appoint one. So that is out. That is settled.

MR. ROBBINS: Very well, Your Honor.

Assume it is another bank, just for the purposes here, Mr. Hamilton possibly -- well, he will undoubtedly face the suits on the land, no question about that. He very likely will face a suit -- I have never understood Mr. Wolf in this completely, but Mr. Wolf seems to want to know who owns these joint accounts right now. He keeps pressing Mr. Hamilton, who owns them now, does he claim them now.

I feel if Mr. Wolf has anything to say about it there would be a suit for declaratory judgment against Mr. Hamilton regarding these joint accounts.

I believe it is a policy, and there is really not too much law, but I believe it is a policy to preserve joint accounts when a conservator is appointed, although I really must say I don't have too much law on it. There is a California case which seems to indicate that.

He would very likely face a suit as conservator of his mother's estate regarding the bank accounts. That is where the ward, his mother, who is also his ward and Mary Millot are joint tenants, although this is really, I think everybody agrees, Agnes Driscoll's money.

I am sure that if Mr. Hamilton was hit with all

these he might have some thoughts, I don't know. But he tells me, for example, that he is so gun shy of the litigation that if the First National Bank, which of course Your Honor has already stated won't be appointed --

THE COURT: I am not saying that the First National Bank wouldn't be a good bank to be a conservator, but I think under the circumstances I should not consider the First National Bank.

MR. ROBBINS: Yes, Your Honor, but the point I am trying to make is that he is gun shy of litigation and he might be afraid to have any relationships with his aunt if some other bank were appointed.

Another thing I want to be very explicit about, Your Honor, is Agnes Driscoll and Mrs. Hamilton and Mr. Hamilton, my client, lived together for many years, they were extremely close all this time.

Since Agnes Driscoll retired Mr. Hamilton has been very close to her. The relatives have not.

I don't believe anybody -- I don't believe Mr. Wolf will contest me when I say --

THE COURT: I would like to ask Mr. Meyers a few questions. Let him step to the stand.

OTTO MEYER

called as a witness by the Court, having been duly sworn, was examined and testified as follows:

THE COURT: I understand that the ward or Mrs. Driscoll is your sister; correct?

THE WITNESS: Yes, sir.

THE COURT: Prior to this difficulty that has arisen in this case, prior to that time -- by the way, when did you first receive notice of this hearing on the appointment of the conservator?

THE WITNESS: I received a letter, certified letter from Mr. Harrison, counsel for Mr. Hamilton at that time, that the hearing for the appointment of a conservatorship would come up on the 10th of April and that was probably -- although I don't have the copies here, I assume it was around the 20th of March or 19th of March.

THE COURT: Starting with that date, at that time where were you living?

THE WITNESS: I lived in New Jersey, Little Silver.

THE COURT: For how long?

THE WITNESS: I have lived there since 1948.

THE COURT: When was the last time that you visited or saw your sister prior to April 10, when you received the notice?

THE WITNESS: I visited her on the 10th of March this year.

THE COURT: In Washington?

THE WITNESS: Yes, sir.

THE COURT: Where was she then?

THE WITNESS: She was at her apartment, 1010 25th Street, Northwest, Washington, D. C.

THE COURT: Did you make the trip to Washington for that purpose?

THE WITNESS: At that time I came because of the stroke which my sister Margaret Hamilton had.

THE COURT: Is your sister older than you are or younger?

THE WITNESS: Margaret Hamilton is possibly eight or ten years older.

THE COURT: I am talking about Mrs. Driscoll.

THE WITNESS: Yes, she is approximately 80.

THE COURT: Would you say you had been on close and friendly terms with her?

THE WITNESS: I have; I have.

THE COURT: Have you ever taken her away for a trip or done anything of that nature prior to this litigation?

THE WITNESS: In the past 25 years or 20 years I will say I have taken them on a number of trips to reunions, like out in Pennsylvania and out in --

MR. ROBBINS: Excuse me. Your Honor, could I ask him to speak in the microphone?

THE COURT: Yes.

THE WITNESS: I have taken Agnes and her mother on numerous trips. I took them to Illinois to visit with my mother's relatives. I took them to Pennsylvania, Washington County, Pennsylvania for a reunion. I think we went twice there and I went twice to Illinois. And I have taken them on other trips.

THE COURT: Prior to the occasion in March of this year when you say you saw your sister in Washington, when was the last time prior to that occasion that you saw her?

THE WITNESS: To the best of my knowledge, I visited her last fall and I usually came down at least twice every year to visit with them, her, her sister and when my mother was living, also my mother.

THE COURT: During those periods you came to know, I take it, Mr. Hamilton?

THE WITNESS: Yes, I knew James Hamilton.

THE COURT: I think what should be done in this case, frankly, this gentleman is faced with a lot of litigation, that is, Mr. Hamilton. He has got his problems in connection with litigation that is pending and other matters.

I have read the complete file in this case and I don't think there is much that you gentlemen can tell me that is not in the file. If you have any new matter --you may step down-- if you have any new matter, I will listen to you.

But my feeling about this case is this: You have two factions in this case, two groups of relatives, one on one side and the other on the other side. If I were Mr. Hamilton I wouldn't want to act as conservator in a situation like this, frankly. I don't care whether he acquiesces in it or not, I am going to make a ruling in this case.

The conservator is the one who is going to have to find out whether any of the legal rights of the ward have been violated, whether she has any rights, whether there is a conflict of interest, who owns these joint bank accounts and things like that.

My present thinking is that a new conservator should be appointed.

That does not mean that Mr. Hamilton has not done a good job. In fact, I think that he must have been very close to the ward in this case, from what I gather from the file. She must have a great deal of affection for him.

I am not intimating what the result of this law suit might be or whether there was any wrongdoing in receiving the property or anything like that. That has to be litigated first.

My present thinking is that there should be a new conservator appointed; nobody suggested by either side.

I will hear either one of you on that.

MR. WOLF: I am in accord with Your Honor's ruling

but I would like to say something, if Your Honor will indulge me for just a minute.

In the pleading handed me in the corridor five minutes before this hearing with respect to my position the four words commencing paragraph 2 are, "Upon information and belief." The paragraph goes on to say that, "My father, the director of the First National Bank of Washington." I think this would be better said had it recited that Mr. Wolf advised Mr. Payne that his father was a director of the First National Bank of Washington. Nothing was uncovered that had been unrevealed.

I also would like to say this, if the Court would indulge me, that the First National Bank being named in the petition arose in the following circumstance. It arose at a time when Mr. Harrison, then counsel for Mr. Hamilton, Mr. Treanor and I consulted together and it looked at that point in the early summer as if a sensible resolution of the matter might be for Mr. Hamilton to resign and for a bank which was suggested by me rather than Otto Meyer, whom I was retained to put in as conservator if I could, serve.

We left that meeting with three things to be done. Mr. Harrison was going to see if this was all right with Mr. Hamilton. I was to go across the street to the First National Bank, where I said I was very well connected, to see if they would take it. And Mr. Treanor was going to consider whatever

we had to report further.

So this was not done under any hidden or covert shadow and I would like the record to reflect that.

There is some innuendo, perhaps I am being supersensitive, that upon information and belief being set out here. I advised Mr. Payne of this position.

MR. ROBBINS: I don't mean to suggest any innuendo. However, I think it should be only fair to point out that it was only last night or the night before that Mr. Wolf did tell Mr. Payne this. However, there was some question about this in the depositions, I think. I think that should be pointed out.

MR. WOLF: Thank you for your indulgence, sir.

THE COURT: I have in the past, I believe in one case or more, I don't know whether there would be any opposition on either side --even if there is opposition I can still do what I think is right-- consider the guardian ad litem for conservator in this case, or do you think he has been too close to the case so that he couldn't act in an impartial way? I would like to hear either one or both of you on that situation. I may not do that, I don't know. I just want to hear a discussion about it.

MR. WOLF: I am not sure Your Honor wants me to think out loud and that is all I can do with respect to this.

THE COURT: You don't have to answer now if you

don't want to.

I might select some bank if they are willing to accept this responsibility. All banks, I don't believe, go in for some of this type of work.

MR. WOLF: On behalf of my clients, though we have every confidence in Mr. Treanor's integrity, I would prefer a corporate fiduciary and would also point out it would save a good deal of money in bond premiums.

THE COURT: How do you feel about it?

MR. ROBBINS: Your Honor, I think somebody who is completely neutral and has had nothing to do with this case and is a member of this bar, I think should be the proper party.

THE COURT: A member of the bar?

MR. ROBBINS: Yes. The reason for that, Your Honor, is because a bank has banking hours and this is a situation --

THE COURT: There are some advantages to having a member of the bar who could give the matter more personal attention than maybe a bank might be able to do.

MR. ROBBINS: One other thought that might not have occurred, it occurred to me, you might want to just consider it along with your other considerations, is perhaps co-conservators with Mr. Hamilton in there.

THE COURT: No, I think it should be somebody entirely new, entirely new.

MR. ROBBINS: I wanted to make that suggestion.
I believe there is a statute which makes that possible.

THE COURT: There is no use spending all that
money and having two conservators. I think one could do the
job.

MR. ROBBINS: Well, except there is the unusual
situation here that Mr. Hamilton has been extremely close to
this lady and, for example, there is a statute which says a
conservator may be appointed for the person and somebody else
for the money. That is a possibility, Your Honor.

THE COURT: I will think about the matter.

MR. WOLF: May I be heard on that point?

The statute, 21,1506, provides that a person, not
called a conservator, can be appointed for the person of the
ward.

We resist that strenuously. The supplemental report
of the guardian ad litem points out as an assertion therein
something which my clients have been concerned about, which
is that Mrs. Driscoll is not in the right place, is not
receiving sufficient attention. She is in, according to what
Mr. Treanor has advised us, the doctor who is attending her
said she shouldn't be there, she is wandering loose, she is
assaulting patients.

MR. ROBBINS: We disagree with Mr. Wolf's state-
ment vehemently. Mr. Payne and I have visited her. We don't

think there is any reason for any such suggestion.

We agree completely that Agnes Driscoll should have every possible bit of assistance and anything that can be done.

I don't know if the Court has even considered the possibility of appointing a doctor but maybe that is a possibility. I throw that out.

We certainly feel that she is in a good place right now. What may transpire in the next few weeks or months we don't know.

MR. WOLF: I am merely quoting the report of the guardian ad litem.

THE COURT: Thank you, gentlemen, for your suggestions and I will do what I think is right.

The bond has been increased, has it not?

MR. ROBBINS: Yes, Your Honor, \$320,000.

THE COURT: That covers the assets.

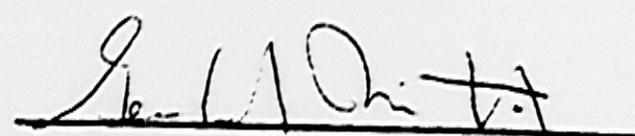
MR. ROBBINS: Yes, Your Honor.

(At 2:30 p.m. the hearing stood concluded.)

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REPORTER'S CERTIFICATE

Certified as the official transcript of proceedings.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re the Matter of :
AGNES M. DRISCOLL : Civil Action No. 696-69
-----x

Wednesday, November 19, 1969

The above-entitled cause came on for hearing before
THE HONORABLE JOHN J. SIRICA, United States District Court
Judge, at 10:00 o'clock a.m.

APPEARANCES:

CHARLES E. ROBBINS, Esq.

RAYMOND LARROCA, Esq.

PROCEEDINGS

THE COURT: I'll hear you, counsel.

MR. ROBBINS: Good morning, Your Honor. I am Charles Robbins, appearing for Mr. William Howard Payne.

May it please the Court, Your Honor issued an order in this case dated October 21 directing the then Conservator, Mr. James Hamilton, to turn over all of Driscoll's assets to the new Conservator, Herbert Miller; and on November 5th we did this.

THE COURT: What did you turn over?

MR. ROBBINS: The bank books, Your Honor, which are, I should have said originally principal assets are joint accounts. There is one joint account in the National Bank of Washington and it is in the names of Margaret M. Hamilton, Mary R. Meyer, and Agnes M. Driscoll.

There is another one in the Washington Permanent Savings and Loan Association in the name of Agnes M. Driscoll and Mary R. Meyer; and another one in the Columbia Federal Savings and Loan Association in the name of Agnes M. Driscoll and Mary R. Meyer.

THE COURT: Did you turn those over?

MR. ROBBINS: Yes, Your Honor --the bank books.

Mr. Miller immediately wrote letters to these institutions and said he was now Conservator, and he directed them to destroy the survivorship rights of the joint tenants and

place the entire accounts in his name as Conservator, and it just didn't occur to me he might do this. I didn't think he had any authority or any basis for destroying the survivorship rights of the other parties and I believe that the accounts should have been placed in his name as Conservator and the other parties as joint tenants and the accounts frozen, and any disbursements to be made upon application of the Court.

Every case that I have been able to find on the subject, there is annotation on it, Your Honor, in the ALR 2d, every single case that I can find anywhere say the survivorship rights are not destroyed.

THE COURT: I don't know what he told the bank. All I know is what you are telling me he told the bank.

MR. ROBBINS: Well, yes, Your Honor, you can hear from Mr. Larroca and I believe he will confirm what I say.

THE COURT: Is he here today?

MR. ROBBINS: Yes, he is here today.

THE COURT: Let's see, do you have a copy of the letter?

MR. LARROCA: I don't know which letter he is referring to, Your Honor. I might add, Your Honor, it was not done by letter, it was done by the man, based on depositors' agreement signed by his clients.

THE COURT: I'll give you an opportunity.

MR. ROBBINS: On the letter to the Ferris Company which is the principal thing we are talking about, I saw the letter, Your Honor.

THE COURT: I don't understand what your problem is. I mean I want the Conservator to take charge of everything that this woman owns.

MR. ROBBINS: That she owns, Your Honor.

THE COURT: Not only that, the other party can go to the bank and take the money out --what is the name? Is she the sister?

MR. ROBBINS: Yes, Your Honor.

THE COURT: Who owned that money? Whose money was it?

MR. ROBBINS: I think, Your Honor, most of the money was Mrs. Driscoll's money.

THE COURT: You know that was her money, don't you?

MR. ROBBINS: No, I don't, Your Honor. I know that Mr. Hamilton --the principal account we are talking about --

THE COURT: Was his money?

MR. ROBBINS: Was four thousand of his money, and the rest of it was Agnes Driscoll's. But the point is it seems to me that is not what we are getting at, that is not the issue here. Now if they feel they are entitled to the whole thing their remedy is to file a suit for declaratory judgment, but the point I make he has no right to put this joint account and destroy survivorship rights by fiat. He doesn't have that right.

THE COURT: I think any rights your client might have will be protected at the proper time when that matter is settled.

MR. ROBBINS: Well, he has taken his name off the account.

THE COURT: That is so he can't go there and draw the money out, I suppose.

MR. ROBBINS: I agree it should be protected, but what should be done the account should be frozen. They have got the money, we have no control over it. All I am saying is he cannot destroy Mr. Hamilton's or anybody else's survivorship rights.

THE COURT: I don't know he is trying to do that, let me hear from counsel. Are you associated with Mr. Miller?

MR. LARROCA: I am Mr. Miller's partner, Your Honor.

THE COURT: I would like to hear from you on that.

MR. LARROCA: My name is Raymond Larroca. I am the partner of the Conservator successor, Herbert Miller.

Your Honor, what we have here, and I would like to raise a preliminary matter to this preliminary matter. I don't know whether this should be before this Court at all in the first place.

THE COURT: I am wondering whether it should myself because I am going to tell you gentlemen right now, just because I appointed a conservator doesn't mean this case stays with me the rest of my life. I have other cases to try and I think this case should go to the regular motions judge.

MR. LARROCA: I would say this, Your Honor, what we have here is that Mr. Robbins, or his client, is attempting to



create a joint tenancy. We terminated a joint tenancy, no question. We exercised contractual rights according to the contract signed by his client. Now, if he wants to start an action he should bring a separate action against the Conservator.

THE COURT: Have you filed an answer to his motion?

MR. LARROCA: I have not.

THE COURT: I'll tell you what I am going to do in this case, I might as well decide it now. I signed the order and I appointed Mr. Herbert Miller as Conservator and I removed, as a result of that order, Mr. Hamilton, his client. Any further litigation on this matter or motions must be taken up in the regular course. I am not going to hear these matters, so you will have to put it on the motions card and have it brought up on some day convenient to the parties. You will have an opportunity to file your answer and it will be heard by the motions judge.

All right.

* * *

C E R T I F I C A T E

It is certified the foregoing is the official transcript of the proceedings indicated.

Nicholas Sokal
NICHOLAS SOKAL
Official Reporter